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ITS PRINCIPLES AND PRACTICE

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MARINE INSURANCE

ITS PRINCIPLES AND PRACTICE

BY

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FIRST EDITION
THIRD IMPRESSION

McGRAW-HILL BOOK COMPANY, INC.
NEW YORK: 239 WEST 39TH STREET
LONDON: 6 & 8 BOUVERIE ST., E. C. 4
1919

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PREFACE

The past four years have witnessed many changes in the commercial life of the United States, not the least of which has been the renaissance of the American Merchant Marine, and with it a marvellous growth in our overseas trade. Shipping, banking and insurance, the trinity of foreign trade, have taken a new lease of life, and American commercial activities are reaching into fields hitherto untouched by purely American enterprise.

This naturally has caused a demand for knowledge concerning these three subjects. New York University, in the foreign trade courses offered in the Wall Street Division of its School of Commerce, Accounts and Finance, has met this demand. It has been my privilege during the past year to lecture before the University on the subject of Marine Insurance. The attendance at these lectures has indicated that a real need exists for non-technical information in regard to this important, but little known, branch of insurance science.

It therefore seemed fitting that the matter contained in the lectures should be rewritten and published in book form so that it might be available to students, and to shipping men, bankers, merchants and insurance men who require a general knowledge of marine insurance. It is the purpose of this treatise to present the subject in a thorough yet simple form, so that the principles and practice of this necessary element in our over-seas commerce may become more generally known.

I wish to avail myself of this opportunity of expressing my gratitude to many who have taken a helpful interest in the preparation of this work, making special mention of Mr. Herbert F. Eggert and Professor A. Wellington Taylor, for their aid in the revision of the manuscript.

WILLIAM D. WINTER.

NEW YORK CITY,
February 1, 1919.

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CONTENTS

PAGE

PREFACE v

HISTORICAL INTRODUCTION 1

Origin of Marine Insurance Doubtful—Ancient Commercial Activity—Early Forms of Insurance—General Average—Bottomry Bonds—Forms of Bottomry Bonds Distinguished—Grecian Commerce and the First Insurance Exchange—The Carthaginians, Phoenicians and Romans—Commerce in the Middle Ages—The Hanseatic League—The First Sea Codes—Early Insurance Rules—Modern Marine Insurance—First Use of Word Insurance—The Age of Discovery—Rules to Prevent Misuse of Insurance—Insurance Well Established in Fifteenth Century—The "Guidon de la Mer"—Marine Insurance in England—The Hansa Merchants and the Steelyard—The Lombards in England—Lombard Street—Departure of Hansa Merchants and Lombards—Influence of Foreign Merchants—First English Marine Insurance Statute—Individual Underwriters—Lloyd's Coffee House and Lloyd's News—A Meeting Place of Underwriters—Insurance Companies Organized—The Monopoly—Growth of Marine Insurance—Lloyd's—Standard Policy Adopted—Increase of Individual Underwriters—Efforts to Incorporate New Companies—Lloyd's Reorganized—The Monopoly Repealed—New Companies—Marine Insurance Law—Lord Mansfield—The Marine Insurance Act, 1906—Early Underwriting in the United States—First American Insurance Corporation—Corporation Development—Competition Among Companies and Failures—The Clipper Ship and Insurance Frauds—Marine Insurance Revives—The Civil War—Foreign Companies Enter the United States—Decline of American Merchant Marine—The Marine Insurance Market Broadens—Little American Capital Invested in Marine Companies—Steady Growth of Marine Insurance—The World War and New American Companies—The Future of Marine Insurance in the United States.

CHAPTER 1

PHYSICAL GEOGRAPHY IN ITS RELATION TO MARINE INSURANCE 29

Effect of Natural Conditions on Trade Routes—Water Routes—Natural Law Discovered—Ocean Navigation—Aids to Navigation—Effect of the Oceans on Climate—Ocean Distances are

Digitized by Google

PAGE

Great—The Physical Force of Nature—The Wind and Storms—Effect of Wind on Ocean Routes—Wave Force—The Power of Waves—Seaquakes and Tidal Waves—Tides—Effect of Tides on Harbor Development—Ocean Currents—Calms—Fog—Ice—Darkness—Harbors and Their Development—Types of Harbors—Drowned Valley Harbors—Barrier Beach Harbors—River Harbors—Coral Reef Harbors—Crater Harbors—Artificial Harbors—Open Roadsteads—Tidal Harbors.

CHAPTER 2

COMMERCIAL GEOGRAPHY IN ITS RELATION TO MARINE INSURANCE. COMMERCIAL DOCUMENTS 44

The Processes of Trade—Commerce is the Exchange of Products—The Demand for Goods—The Opening of New Trade Routes—Primitive Barter—Types of Trade—The Use of Symbols and the Bill of Exchange—Marine Insurance Essential to Overseas Trade—Commercial Documents—The Invoice—Cost Sales. F. O. B. and F. A. S.—Cost and Freight Sales (C & F)—Cost, Insurance and Freight Sales (C. I. F.)—Invoice Determines Relation of Buyer and Seller—The Charter Party—Forms of Charters—The Bill of Lading—Bill of Lading a Contract of Carriage—Liability of Carrier Determined by Bill of Lading—The Manifest—The Marine Insurance Policy or Certificate—The Symbols of Ownership—The Draft or Bill of Exchange—Method of Collection of Draft—Trading in Bills of Exchange—Letters of Credit—The Balance of Trade—Goods the Basis of Exchange.

CHAPTER 3

SHIPS AND SHIPBUILDING 61

A Vessel the Basis of all Marine Insurance—Mediums Used in Construction of Vessels—Wooden Ships. Difficulties in Construction—Green Wood and Its Effect—The Fastenings of Wooden Vessels—Composite Ships—Steel Vessels—The Marine Engine—Liners and Tramps—Longitudinal Framing—Bulk Cargo Carriers—The Self-trimming Vessel—Concrete Ships—Lake Vessels—River and Harbor Craft—Types of Marine Engines—Why Does a Vessel Float?—Displacement—Displacement Curve—When Will a Vessel Float?—Buoyancy—Free-board and Load Lines—The Plimsoll Mark—The Advantages of a Load-line Law—Stability. The Centers of Buoyancy and Gravity—Why a Vessel Rights After Rolling—The Law of Inertia—Shifted Cargoes—The Meta-center. Stiff and Tender Vessels—The Control of Meta-center Height—Loading Problems.

Digitized by Google

CHAPTER 4

PAGE

THE SHIP AS A CARGO CARRIER 77

Stresses and Strains—The Strain of Unequal Weights—Strain of Lateral Pressure and of Wave Action—Panting Strains—Other Strains—Vessels in Ballast—The Classification Societies—What a "Class" Signifies—Lloyd's Register—Rival Organizations—Necessity for Understanding Classification Society Codes—The American Record—Underwriters' Surveyors—Underwriters' Organizations—Underwriters' Boards and Loss Agents—Salvage Associations—Maps, Charts and Port Books—The Tools of the Underwriter—Factors in Underwriting—Nationality—Owners, Managers and Masters—Structural Characteristics of Ship and Its Physical Condition—Other Considerations—The Measurement of Ships—The Measurement of Cargo Capacity—Cargoes and Shipping Packages—The Moral Hazard.

CHAPTER 5

THE CONTRACT OF MARINE INSURANCE. RULES FOR CONSTRUCTION .. 93

Definition of Marine Insurance—Not a Perfect Contract of Indemnity—Only Fortuitous Losses Covered—Negligence Should Not be Covered by Policy—The Effect of Insurance—The Law of Averages. Competition—Modern Policy Broad in Its Protection—Good Faith—Elements of a Contract—Corporate and Individual Underwriters—An Insurable Interest Necessary—The Premium a Valid Consideration—The Minds of the Contracting Parties Must Meet—A Legal Purpose Necessary—Direct and Indirect Placing of Insurance—Brokers—The Insurance Application—Binders and Inquiries—The Policy—Rules for Construction—Usage—Mercantile Customs—Printed, Written and Stamped Words—The Intention of the Parties. Technical Words—Extrinsic Evidence—Does the Application Control the Policy?—The Law of the Place—The Cancellation and Modification of Contracts—The Assignment of Policies. Certificates—Clarity Essential in the Writing of Policies.

CHAPTER 6

THE POLICY. ASSURER AND ASSURED 108

Types of Policies—Form of Policy—British Form of Policy—The Assurer—The Assured—Insurable Interest Must be an Actual One—Extent of the Insurable Interest—Persons Who Have Insurable Interests—"For Account of"—Attachment of Policy—Description of Insurable Interest Should be Definite—An Insurable Interest Must Exist—Whom It May Concern—"Whom It May Concern" is not All Inclusive—"Trading With the Enemy"—The Payee of Loss—The Insurance Certificate Transfers the Payment

Digitized by Google

PAGE

of Loss—Loss May be Made Payable in Foreign Countries—Loss Orders—Open or Floating Policies—Blanket Policies—Advantages of Blanket Policies—Transit Floaters.

CHAPTER 7

THE POLICY (Continued). THE TERMINI..... 125
Lost or Not Lost—"Lost or Not Lost" a Necessary Condition—The Termini—The Subject Matter of Insurance—Goods Presumed to be Laden Under Deck—Some Kinds of Property Should be Specifically Mentioned—The Vessel and Its Master—The Attachment of the Risk—Date of Attachment—The Time of Attachment—Insured Until Safely Landed—Warehouse to Warehouse Clause—At and From—Attachment of Cargo Insurance—Risk After Discharge from Vessel—Attachment of Hull Risks on Time—Attachment of Voyage Risks on Hull—Policy May Terminate by Breach of Contract—The Doctrine of "No Deviation"—The Conduct of the Voyage—When Does Deviation Occur?—The Valuation—Determination of Value—Valued Policies in Marine Insurance Justified—The Basis of Valuation—Hull Values.

CHAPTER 8

THE POLICY (Continued). THE "PERILS" CLAUSE..... 140
Perils Insured Against—A Formidable List of Calamities—Doctrine of Proximate Cause—Losses Which are Not Covered by the Policy—Losses Due to Fraud or Misconduct—Perils of the Sea—Enumeration of Perils of the Sea—Unavoidable Accident a Peril of the Sea—Other Perils of the Sea—Fire—Fire Protection—Jettison—Barratry—Lawless Acts and War Perils—Theft and Pilferage—Pirates and Rovers—War Perils—Men-of-war—Enemies—Letters of Mart and Countermart—Reprisals—Takings at Sea. Arrests—Restraints and Detainments—Kings, Prices or People—All Other Perils—The "Free of Capture" Clause—Strikers and Locked Out Workmen Clause—Modifying Clauses.

CHAPTER 9

THE POLICY (Continued). SUE AND LABOR CLAUSE..... 155
Sue and Labor Clause—Purpose of Sue and Labor Clause—Applies to Specific Property Insured—Assured Must Enforce His Rights Against Third Parties—The Premium—Competition Affects Rates—Premium Charged on Amount Insured—Rates of Premiums Used in Great Britain—Return Premium—Proofs and Payment of Loss—Proofs of Interest—Adjustment of Loss—Average Clauses. The Franchise—Deductible Average Clauses—Purpose of Average Clauses—Average Clauses Reduce Cost of Insurance—Double

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PAGE

Insurance—Theory of Double Insurance Different in Great Britain —Under Insurance—Insurance on Same Property Covering Different Risks—Carrier's Liability—Illicit or Prohibited Trade—Abandonment—Purpose of Abandonment Clause—Liability for Expenses—Liberty to Deviate in Event of Blockade—The Attestation Clause—Memorandum Clause—Underwriter Retains Premium on Risk Unwittingly Insured After Arrival—Résumé.

CHAPTER 10

THE MEMORANDUM CLAUSE. IMPLIED AND EXPRESSED WARRANTIES. REPRESENTATION AND CONCEALMENT 170

All Goods Not Equally Susceptible to Damage—A Uniform Rate of Premium Desirable—The Memorandum Clause—General Average Introduced into Marine Policy—Excepted Risks—The Separation of Damaged Goods—Insurance Does Not Restore Property—Implied Warranty of Legal Conduct—Seaworthiness—Tests of Seaworthiness—No Fixed Standard of Seaworthiness—Seaworthiness Refers to Inception of Risk—Implied Warranty of Seaworthiness not Applicable to Hull Time Risks—The Waiver of Warranty of Seaworthiness—Implied Warranty of Seaworthiness Refers to Vessel, Not to Cargo—Proof of Breach of Warranty of Seaworthiness—Implied Warranty of Prompt Attachment of Risk—Delay Must be Unreasonable to Void Contract—Other Implied Warranties —Breach of Warranty May be Excused—Expressed Warranties —Warranties and Stipulations—Expresses Warranties Usually Relate to Material Conditions—Representation, Misrepresentation and Concealment—The Avoidance of Contracts—Fraud—What Must be Disclosed—The Effect of a Representation—Certain Facts Need Not be Disclosed—What a Representation Implies—Fraud.

CHAPTER 11

CARGO INSURANCE AS AN UNDERWRITING PROBLEM 186

Basic Form of Policy Necessary—Cargo, Hull and Freight Insurance—General and Full Cargoes—Under and on Deck Cargoes —A General Knowledge of All Commodities Essential—Marine Insurance Conforms to Trade Customs—Methods of Shipment Controlled by Physical Environment—Knowledge of Trade Customs Important—Racial Characteristics Affect Marine Insurance—Sale of Goods at Port of Refuge—Effect of Vessel Types on Cargo Insurance—Vessel Speed an Element in Cargo Insurance —Structural Design in Its Relation to Cargo—Natural Forces as Related to Cargo Insurance—Optional Routes—Other Elements in Cargo Insurance—Average Conditions—Free of Particular Average—American and English Average Clauses Contrasted—

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PAGE

The Effect of the F. P. A. E. C. Clause—F. P. A. E. C. Clause Illogical—Amended F. P. A. E. C. Forms—Stranding and Sinking —Burning and Collision—Other Casualties—Duration of Risk—Rate of Premium Based on Ordinary Transit—Cargo Clauses are Numberless.

CHAPTER 12

SPECIFIC CARGO RISKS 201
Full Cargo Business—A Seasonal Business—Congestion Hazard—Overloading of Vessels—Unfit Vessels Used to Carry Full Cargoes —Fire Hazard—Classes of Cargo—Products of Agriculture—Sweat Damage. Skimmings Clause—Raw Cotton—Schedule Rating—Grain Cargoes—Standard Clauses—Hard and Soft Grains—Vegetable Fibers—Raw Sugar—Fruits and Vegetables—Products of Animals—Canned and Bottled Goods. Dairy Products—Refrigerated Goods—Dressed Meats—Livestock—Hides and Skins—Raw Silk—Products of the Forest—Wood Cargoes—Products of the Mines—Coal and Ore—Products of Manufacturing—Diversity of Risk—Machinery—Burlaps and Bags. Fire Hazard—Leakage and Breakage—Common Carriers' Insurance—Common Carriers' Liability—Parcel Post and Registered Mail Insurance—Securities and Currency.

CHAPTER 13

HULL INSURANCE 219
Classes of Hull Insurance—Single Vessel and Fleet Insurance—Single Vessel Risks—Fleet Insurance—Moral Hazard—The Value of a Vessel—Valuation Should be Reasonable—Trading Warranties —Institute Warranties—Loading Warranties—Purpose of Warranties—Average Clauses—Three Percent Average Clause—Separate Valuations—Thirds Off—Modified "Thirds Off" Clauses—Machinery Claims—Collision Liability—Legal Expenses in Collision Cases—Club Insurance—Protection and Indemnity Clause—Cancellation and Lay-up Return Premiums—"And Arrival"—Insurance—Port Risk Insurance.

CHAPTER 14

SPECIAL POLICY FORMS FOR THE INSURANCE OF HULLS 234
Special Hull Forms—Work of the Hull Associations—Basis of All Policies the Same—Rates of Premium—The A. H. U. A. (1917 Form)—P. P. I. and F. I. A. Interests—Purpose of the Disbursements Warranty—Breach of Warranty with Respect to Innocent Parties—Average Clause—Sale or Transfer of Ownership—Contributory Values—Effect of Breach of Cargo and Trade Warranties—Lake Time Clauses—Restrictions as to Navigation—

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PAGE

Extension of Navigation Limits—Winter Mooring Clause—Deductible Average Clause—Lay-up Clause. Change of Interest—Wooden Sailing Vessels—Wooden Steamers—The Internal Combustion Engine—The Auxiliary Sailing Vessel—Defects in Motive Power—A. H. U. A. Auxiliary Sailing Vessel Form—The Future of Auxiliary Vessels—Builder's Risks—Special Hazards Insured Against—Risks After Launching—Underwriter Guarantees Integrity of Material—Special Clauses and Warranties—Return Premiums—Fertile Field for Insurance.

CHAPTER 15

FREIGHT INSURANCE 251

Freight Insurance a Difficult Subject—Meaning of Freight in Marine Insurance—Vessels Built to Earn Freight—When is Freight Earned?—Freight "Pro-rata Itineris Peracti"—Prepaid and Guaranteed Freight—Prepaid Freight Wrong in Principle—Interesting Underwriting Problems—Charter Parties—Charter Money—Bill of Lading Freight—Delivery of Cargo in Specie—Collectible Freight or Freight Contingency—Various Freight Interests in a Single Venture—Freight a Contingent Interest. Dead Freight—When Does Insurable Interest Commence?—Future Freights—Anticipated Freight—On Board or Not on Board—Chartered or as if Chartered—Termination of Risk—Amount Insured—Duty Insurance—Premium is Due Even if Duty Not Paid.

CHAPTER 16

WAR INSURANCE 266

War Insurance an Important Feature—Little Knowledge of War Insurance—A Great War Thought to be Impossible—Perils Judged by International Law—Principles of War and Marine Insurance the Same—Perils Insured Against—The Declaration of London—Blockade in Time of War—Contraband of War—Absolute Contraband—Carriage of Contraband Cause for Condemnation—Unneutral Service—Destruction of Neutral Prizes—Transfer of Vessels. Convoy—Right of Search—International Law Not Observed—Doctrine of Ultimate Destination. Preëmption—Unforeseen Perils—Neutrality Warranties—"Free of British Capture" Clauses—Trading With the Enemy—Licenses—War and Marine Risks Separately Insured—Doubtful Losses—Intermediate Liabilities. Explosion Hazard—New War Devices—Submarines and Commerce Raiders—New and Unusual Hazards—Airplanes—Government War Bureaus.

Digitized by Google

CHAPTER 17

PAGE

REINSURANCE 281

The Destruction of Large Values—Reinsurance—The Distribution of Risks—Growth of Reinsurance—Jumbo Lines—Necessity for Large Limits—Retained Lines—Purpose of Reinsurance—Reinsurance Not Different in Principle—Special and Floating Reinsurance Contracts—Reinsurer Bound by Acts of Reassured—Limitation of Liability—Share or Participating Reinsurance—Excess Reinsurance—Effect of Determination of Excess Amount—Division of Interest—Complications at Transhipping Points—Prior Losses Under Excess Policies—Excess Loss Reinsurance—Speculative Insurance—Shore Reinsurance—Co-insurance—Special Reinsurance Risks. Flat Reinsurance—Reinsurance Pools—Reinsurance Subject to Original Conditions—Reinsurance at Original Rates—Market Conditions—Arbitrage—Reinsurance of Unterminated Risks—Reinsurance of Overdue Vessels and Vessels in Disaster—Reinsurance Bordereau. Concurrent Reinsurance—Foreign and Domestic Reinsurance—Original Assured Has no Claim on Reinsurance.

CHAPTER 18

LOSSES. INTRODUCTION. GENERAL AVERAGE 297

Losses Beneficial to Marine Insurance—The Conduct of Loss Matters Important—Insurance Funds Must be Conserved—Loss Adjusting a Profession—Specialization in Loss Adjusting—General Average—No Reasonable Substitute for General Average Yet Found—Definition of General Average—The General Average Adjuster—Laws of General Average Not Uniform—Elements Necessary to Valid General Average—The Peril and the Sacrifice—The Preservation of Part of the Venture—What is a Voluntary Sacrifice?—The General Average Adjustment—Contributory Value of Hull—Freight Contribution—Contributory Value of Cargo—General Average Cases are Often Complicated—Statement of Both General and Particular Average—York-Antwerp Rules—Provisions for York-Antwerp Adjustments—Jettison and Fire—Cutting Away Wreck. Stranding—Injury to Engines or Sails—Thirds Off. Separation of General and Particular Average—Freight—Borderline Cases.

CHAPTER 19

PARTICULAR AVERAGE 313

Most Claims are for Partial Loss—Particular Average Refers to a Special Interest—Particular Charges—Comparison of Gross Sound and Damaged Values—Comparison of Gross Values Justified—Comparison of Net Values Unfair—Freight and Duty—Policy

Digitized by Google

PAGE

Value Controls—Determining Depreciation by Appraisal—Salvage Losses—Certificate of Damage—Special Adjustments—Effect of Average Clauses—Cause of Loss—Particular Average on Profits and Commissions—Particular Average on Hull—Apportionment of Expenses—Temporary Repairs—Valuation of Hulls—Cause of Damage to Hulls—Partial Loss of Freight—Collectible Freight—Substitution of Vessel or Cargo—Freight Not Always Involved in Damage to Ship or Cargo—Protest of Master—Proofs of Loss—Duplicate Documents—Certificate of Enrollment.

CHAPTER 20

TOTAL AND CONSTRUCTIVE TOTAL LOSSES. WAR LOSSES..... 327
Definition—Constructive Total Loss—Adjustment May be Simple—Assured Must Endeavor to Preserve Property—When Is a Thing Lost?—When Does a Constructive Total Loss Occur?—American and English Practice Differs—Abandonment—Tender of Abandonment—Validity of Abandonment—Tender Must be Promptly Made—Acceptance of Abandonment—Effect of Acceptance—Abandonment May be Deferred by Mutual Consent—Assignment Dates from Time of Loss—Abandonment of Vessel Involves Freight—No Abandonment if Loss Not Due to Insured Peril—Total and Constructive Total Loss of Vessel—Total Loss of Cargo—Total Loss of Freight—Proximate Cause—War Losses. Missing Vessels—Presumption of Cause of Loss—Perplexing Problems—Doubtful Cases—The Right of Subrogation—Salvage—Carrier's Liability—Carriers Slow to Respond for Losses—Benefit of Insurance Clauses—Loan Receipts.

CHAPTER 21

BROKERS. MUTUAL COMPANIES..... 342
The Business of Insurance—Brokers—Not a New Factor—Brokers Indispensable—Occupies an Anomalous Position—The Broker Offers Service—A Trained Expert—The Broker Knows the Market—Progressive Underwriting—The Broker's Duty Twofold—The Broker's Attitude Toward Losses—The Broker Arranges Settlement of Losses—The Broker's Services in General Average—Commissions—Broker Does Not Guarantee Payment of Premiums—The Broker as an Underwriter—A Difficult Relation—Brokers in England—Losses and Return Premiums—Current Accounts—Mutual Companies—Theory Sound in Principle—Method of Organization—Distribution of Earnings. Scrip Certificates—Redemption of Scrip—Policy Holders Not Subject to Assessment.

Digitized by Google

CHAPTER 22

PAGE

OFFICE ORGANIZATION. THE ANNUAL STATEMENT..... 356
Departmental Organization—Purpose of Records—Organization Divided into Three Sections—Underwriting Department—Inspection Department—Binders—Line or Excess Department—Customer's Records—Certificate and Policy Departments—Collection Department—Participating Companies—Loss Department—Appraisers—Loss Adjusters—Financial Department—Cashier's Department—Transfer Department—Accounting Department—Agency Department—Statistical Department—Marine Insurance Not an Exact Science—Preparation of Statistics—Deductions—Statistics Must be Accurate—Annual Statement—Income and Disbursements—Assets and Liabilities—Underwriting and Investment Exhibit—Schedules—Publicity in Insurance.

APPENDIX A

STANDARD APPLICATION FORM USED IN SPECIAL RISKS ON CARGO..... 370

APPENDIX B

STANDARD FORM USED IN REQUESTING RETURN PREMIUM, EITHER BECAUSE OF CANCELLATION OR REDUCTION OF RISK..... 372

APPENDIX C-1

AMERICAN HULL UNDERWRITERS ASSOCIATION FORM, 1917..... 373

APPENDIX C-2

AMERICAN HULL UNDERWRITERS ASSOCIATION FORM, 1918..... 377

APPENDIX C-3

AMERICAN HULL UNDERWRITERS ASSOCIATION FORM FOR BUILDERS RISK 380

APPENDIX D

LAKE TIME CLAUSES..... 382

APPENDIX E

MARINE INSURANCE ACT, 1906..... 387

Digitized by Google

APPENDIX F

PAGE
MARINE INSURANCE (GAMBLING POLICIES) ACT (1909) 415

APPENDIX G

THE HARTER ACT 417

APPENDIX H

YORK-ANTWERP RULES OF 1890 419

APPENDIX I

AVERAGE BOND 424

APPENDIX J

GENERAL AVERAGE GUARANTEE 426

INDEX 427

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A Selected List of Reference Books

FREDERICK MARTIN: History of Lloyd's and Marine Insurance in Great Britain.

GREGORY-KELLER-BISHOP: Physical and Commercial Geography.

DOUGLAS OWEN: Ocean Trade and Shipping.

THOMAS WALTON: Know your own Ship.

FRANKLIN ESCHER: Elements of Foreign Exchange.

WILLIARD PHILLIPS: Treatise on the Law of Insurance.

THEOPHILIS PARSONS: Law of Marine Insurance and General Average.

WILLIAM GOW: Marine Insurance.

WILLIAM GOW: Sea Insurance.

FREDERICK TEMPLEMAN: Marine Insurance: Its Principles and Practice.

GEORGE MAITLAND LAZARUS: A Treatise on the Law relating to Insurance of Freight.

THOMAS GILBERT CARVER: Carriage by Sea (6th Edition by James S. Henderson).

ERNEST W. CONGDON: General Average.

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MARINE INSURANCE

HISTORICAL INTRODUCTION

THE HISTORY OF MARINE INSURANCE, ITS ORIGIN, GROWTH AND PRESENT STATE

Origin of Marine Insurance Doubtful.—Marine Insurance is the oldest form of indemnity of which there is any record. It is known to have been practised for over seven hundred years. When, where and by whom it was first devised, however, remains one of the unanswered questions of commercial history. Several nations have claimed the honor of having invented this system of indemnity, but the best evidence indicates that the Jews, at the time of their banishment from France in the latter part of the twelfth century, introduced such a scheme of insurance for the protection of their property during its removal from France. Villani, a fourteenth century historian, is the authority for this theory, stating that the system was devised in Lombardy in 1182. Whether this is correct or not is of little moment—the fact remains that early in the development of commercial intercourse the need arose for some system of distributing marine losses, and the present method of insuring came into use.

Ancient Commercial Activity.—In order to obtain a proper perspective of marine insurance, it is important to trace the development of commercial intercourse among the nations of the world. That the seas were used as the highways of trade early in the history of man is evidenced by both sacred and profane history. In the Bible there are many references to ships, especially to the ships of Tarshish in one of which Jonah was fleeing from Joppa to Tarshish when the ship was overtaken by a mighty tempest. The story of Jonah is interesting in this connection in that there appears a perfect example of jettison,

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one of the perils covered by the present marine insurance policy, when, on account of danger, the mariners cast forth into the sea the wares that were in the ship in order to lighten it. This experience occurred in B. C. 916, about the time that the Rhodians obtained sovereignty of the sea.

Early Forms of Insurance.—The Rhodians were originally an agricultural people but early in their history turned to commerce in order to dispose of their surplus products. They were harassed by their neighbors, who continually waged war upon them, but by B. C. 916, they had obtained the mastery of the sea. About this time they promulgated a system of maritime jurisprudence, which has become the basis of the Roman code and of all modern laws relating to commerce and navigation. No reference to insurance is found in this system, but General Average is recognized as a commercial custom. Bottomry Bonds were also in use early in commercial history, and a word of explanation in regard to these two forms of indirect insurance will be of interest.

General Average.—It was customary in the early days for merchants to travel with their wares and there might be in the same ship several merchants, each journeying with his goods in order to sell them at the port of destination and there buy other goods with the proceeds. During the course of the voyage let it be supposed that a severe storm arises threatening the safety of the ship and making necessary the casting overboard of part of the cargo in order to lighten the vessel. Naturally a dispute ensues as to whose goods shall be sacrificed, each merchant preferring that his neighbor's goods and not his own be cast out. There is, however, little time for argument when a ship is laboring in a storm and, to prevent such disputes and to effect the saving of vessels and their cargoes without having all the loss fall on any one or two individuals whose cargo could most easily be jettisoned, the custom arose of having each person interested in the venture, whether shipowner or cargo owner, contribute to make good the loss suffered by those whose property was sacrificed. This custom soon obtained the force of law and is now part of the commercial code of all maritime nations. The word *average*, as used in marine insurance, means loss or damage, so that a General Average is a loss falling generally on all the

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interests involved in a maritime venture as distinguished from Particular Average or a loss falling on one particular interest.

Bottomry Bonds.—In the early days of commercial history shipowners and cargo owners were accustomed to borrow money with which to carry on their ventures, by pledging their vessels or their cargoes as security for such loans. The document setting forth the terms of the agreement was known as a Bottomry Bond when the vessel was pledged, and a Respondentia Bond when the cargo was hypothecated. By the terms of such agreement the sum named in the bond was loaned, subject to the condition that it should be repaid upon the arrival of the vessel at a named port. If the vessel was lost the borrower was discharged from his obligation. The rate of interest which such bonds carried was very high, since the lender practically insured the property. The rate of interest charged, which like the principal sum was payable only in the event of safe arrival, included compensation not only for the use of the money loaned, but also for the possible loss of the money itself through the failure of the venture. This method of loaning money was really the reverse of our present system of marine insurance. At the present time the underwriter charges a rate of premium on an amount representing the fair value of the vessel or cargo, plus the insurance premium and other expenses, which amount he agrees to pay in the event of the vessel or cargo being lost through perils insured against.

Forms of Bottomry Bonds Distinguished.—Under the bottomry bond system the lender in effect paid for the property at the beginning of the venture, the borrower repaying the amount loaned plus interest (premium) on safe arrival. This form of bottomry bond which represents a voluntary pledge of property, must be distinguished from bonds called by the same name, which the master of a vessel in distress must make when all other means of raising funds, to effect repairs in order to save vessel and cargo, have failed. The conditions in regard to the repayment of the amount loaned, plus maritime interest, as it is called, are the same in this latter form of bond as in its earlier prototype. Under present mercantile usage, loans on vessels are made by the execution of a bond secured by a mortgage on

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the hull, which in turn is protected by a policy of insurance payable to the lender.

Grecian Commerce and the First Insurance Exchange.—Among the early maritime nations are found the Greeks whose commerce, while extensive, was confined largely to the Euxine Sea, especially at Corinth and Athens. A development of interest to the student of marine insurance is an Exchange which the Greeks established at Athens for the placing of bottomry bonds. In a very interesting monograph on "Marine Insurance in Old Greece,"[1] Dr. Benjamin W. Wells describes the operation of this exchange and the news system working in connection with it. The bankers and merchants operated swift dispatch boats which brought early news of wars and rumors of wars and of the state of the market, so that vessels could be diverted to safe ports and to favorable markets. The whole scheme seems to have been a forerunner of the modern Lloyd's, London. It also appears that human nature has changed little since the days of the early Greeks, for Dr. Wells cites numerous cases brought into court for the collection of money loaned on bottomry, where it is charged by the lender that the vessel or cargo has been lost under suspicious circumstances. It is quite evident from the arguments made by counsel in these reported cases that insurance by bottomry bond was an established and essential feature of commercial transactions not only in Ancient Greece, but also in the other maritime nations.

The Carthaginians, Phœnicians and Romans.—Early in the development of commerce the Carthaginians and the Phœnicians exercised a potent influence in the markets of the then known world. These nations later fell a prey to Alexander, who destroyed their cities and removed their commerce to Alexandria. But Alexandria too passed away and at the dawn of the Christian era Rome held sway as the mistress of the world. Rome is remembered, however, not for her commercial progress, but rather for her military achievements. In fact it was the policy of Rome to discourage mercantile endeavor as being harmful to the state. The commerce of the Roman Empire consisted largely in carrying supplies and provisions for her armies of conquest. Nevertheless, the Roman bankers were not averse to investing their surplus

[1] *Insurance and Commercial Magazine*, March, 1918.

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funds in bottomry bonds, notwithstanding the fact that the loaning of money at interest was discouraged. In fact, by an edict of the Roman Emperor Justinian, dated A. D. 583, a rate for such loans was fixed at twelve per cent. After the fall of the Roman Empire little information is obtainable for many centuries in regard to the development of commerce.

Commerce in the Middle Ages.—With the revival of commerce in the Middle Ages there developed two centers of commercial activity, the one in the Mediterranean Sea, the other in the Baltic Sea. The Venetians and Genoese were the leaders in the Mediterranean, these two peoples becoming the merchants of the world. They had been driven down from their homes in Central Europe to the shores and adjacent islands of Italy, where they were able not only to defend themselves against their enemies, but also to establish an overseas commerce that covered the whole of the then known world. The Crusades did much to increase the prosperity of these peoples, as their cities made convenient supply stations on the road to the Holy Land, and they were not slow to take advantage of the situation. The returning Crusaders had acquired a taste for the products of the Eastern nations, and the Italian merchants imported and distributed these goods to the other European peoples.

The Hanseatic League.—The commercial activity in the Baltic Sea was also controlled by peoples who had been driven out of Central Europe by the Barbarians, but had fled North and established various centers of commerce on the Baltic and North Seas. As a measure of mutual protection these several communities perfected an organization known as the Hanseatic League, which undoubtedly was the most powerful offensive and defensive commercial alliance which the world has ever seen.

The First Sea Codes.—In the "Laws of Wisby," a sea code compiled probably in the early part of the fourteenth century for the government of the Hanseatic League, reference is made to Bottomry. It is, however, in some of the Collections of Ordinances, decreed at general meetings of the Hanseatic League, that regulations are promulgated for the correction of abuses in connection with the issuance of Bottomry Bonds. These sea codes known as "Recessus Hansæ" and "Recessus Civitatum Hanseaticarum" indicate that at this period the

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practice of Bottomry was still an important part of maritime commerce.

Early Insurance Rules.—Frederick Martin in his interesting work on "The History of Lloyd's" states that one of these early "Recessi," issued at Lübeck, where most of the meetings of the Hanseatic League were held, devotes a whole chapter to the subject of Bottomry. It appears from this record that insurance frauds are as old as the business itself. The sixth chapter of this "Recessus" states that:

"Whereas there occur every day more deceptions as regards Bottomry, and there is not wanting even discovery of wicked crimes, it is ordered that henceforth masters of vessels shall have no power to raise money on Bottomry at the place where the freighters reside, in order that the free parts of the ship may not be burthened with charges resting on those that are engaged. And in case masters wish to raise money on Bottomry on parts belonging to them, it must be with the knowledge of the freighters, at the place where they live, and only to the extent of their interest. Should anybody lend more than this, he who has advanced the money shall only have a claim on the master's property and not on the ship, and the master, if necessary, shall be punished."

In another paragraph of the same chapter an exception is made to the above rule, and permission is granted to masters, should they meet with accidents in foreign countries and have no goods to sell, to pledge the vessel to raise money to effect repairs. The amount to be thus raised, however, is limited to the sum required to make such necessary repairs. In the event of the master raising money in foreign countries in a fraudulent manner, he was held answerable not only with his property, but might also incur the penalty of imprisonment and even death.

Modern Marine Insurance.—The Hanseatic codes indicate, however, that bottomry was practised more in the sense of loans made of necessity to effect the preservation of the venture, and not as a mere insurance proposition. Marine Insurance in its direct form having been introduced among the merchants of the Mediterranean Sea, it is altogether probable that it was adopted at a very early period by the members of the Hanseatic League. The Lombards and the Hansa merchants controlled the commerce of the world. The Lombards operated as far north as Bruges, and the Hansa merchants controlled commerce from Bruges

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north. The two groups of merchants traded with one another and as will appear both groups had their share in the development of commercial England.

First Use of Word Insurance.—There is an old historical work called the "Chronyk van Vlaendern" in which the term *insurance* in the modern meaning of the word appears. The authenticity of this "Chronyk" has been doubted, but Frederick Martin in his work cited above says, "if there is no evidence that has come down to us—in its favor, neither is there any against it." The words of this "Chronyk" read in part as follows: "On the demand of the Inhabitants of Bruges, the Count of Flanders permitted in the year 1310, the establishment in this Town of a Chamber of Assurance, by means of which the Merchants could insure their Goods, exposed to the Risks of the Sea, or elsewhere, in paying a stipulated Percentage." Bruges was one of the leading ports of the Hanseatic League, where much of the trading between the Hansa merchants and the Lombards took place and it is not unreasonable to suppose that some such insurance market was there established. It is recorded that as many as one hundred and fifty vessels would arrive at Sluys, the outer harbor of Bruges, on a single tide. Such commercial development at so early a period in maritime history seems incredible.

The Age of Discovery.—Commercial development was not confined, however, to the Lombards and to the Hansa merchants, but with the perfecting of a practical mariner's compass, other nations rapidly entered the overseas trade. The "Age of Discovery" was ushered in. Mariners no longer needed to skirt the shores of the continents or dash from headland to headland, but could fearlessly launch out into the deep on voyages of discovery and conquest. It was discovered that the world was round and not square, and that by sailing West the East was reached. The taste which Europe had received of the products of the East had developed a real and growing demand for these commodities, but the long and hazardous overland haul from India to the Eastern shores of the Mediterranean led to the demand for a quicker and less expensive route. This was soon found by the hardy mariners who braved the terrors of the unknown oceans in their frail vessels and opened up new avenues of commerce. Soon Spain, Portugal, France, Holland and last,

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but not least, England entered into the race for commercial prestige and Colonial development.

Rules to Prevent Misuse of Insurance.—With this rapid growth in overseas commerce it is not surprising that marine insurance grew into a definite system of indemnity and that the various continental nations issued ordinances and codes which set forth the usages and customs relating to marine insurance and laws for the government of its practice. The earliest of these codes is the ordinance issued by the Magistrates of Barcelona in 1435. The necessity of law arises because men, uncontrolled, take advantage of their weaker fellows, and this first code relating to marine insurance is no exception to the rule, for it is largely concerned with the prevention of fraud in connection with marine underwriting. Rules are included in this ordinance limiting the amount which may be insured on certain vessels and prohibiting altogether the insurance of vessels owned and freighted by foreigners. The code also provides that those "who write policies shall be bound to see that they are properly drawn" and, differing from modern practice, requires that the policy must be signed by the Assured or his representative, "who must declare on oath the particulars of the insurance." Wager policies were prohibited and in order that the premium might be secured to the underwriter it was provided that the policy was of no effect unless the premium was actually paid and acknowledged in the contract. On the other hand, the underwriter was held to a strict compliance with his contract, the time within which proved losses and losses arising from cases of missing vessels must be paid being minutely described.

Insurance Well Established in Fifteenth Century.—This first ordinance of Barcelona was followed by others issued in 1436, in 1458 and in 1461, while in 1468 the Grand Council of Venice issued a decree in regard to the place of trial for actions arising out of marine insurance disputes and a somewhat later decree issued in Venice deals with the still prevalent custom of carrying unsafe deckloads. While these ordinances and similar ones issued in Florence, Bilbao and other cities are of exceeding interest in tracing the growth of marine insurance customs and practice, they are also of great importance from the historical standpoint as indicating very clearly that by the fifteenth cen-

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tury marine insurance was well enough established to require stringent rules governing its practice and to prevent its abuse.

The "Guidon de la Mer."—One of the most interesting of all the early works on marine insurance is the "Guidon de la Mer," written by an unknown author late in the sixteenth or early in the seventeenth century and apparently published in Rouen, France. This work gives a rather complete outline of the rules and conditions under which marine insurance was practised at this time. It appears that not only were contracts of insurance required to be in writing, but it was necessary to have such contracts enrolled as public acts before a register and without such registration the policies were null and void. Certain elaborate rules are set down for the government of the register or greffier, as he was called. Among other things he was required to collect a fixed fee for his services and to keep in his office a collection box for the poor, into which the Assured was ordered to drop "six deniers for every thousand of livres assured." Indications appear in the "Guidon" that at the time of its issuance marine insurance was generally practised in all the Continental countries and in England and that policies made in one country were payable in another at a fixed rate of conversion for foreign currency. A form of policy also appears in the "Guidon" which conforms closely to the earliest English policy dated 1613 and found in the Bodleian Library at Oxford.

Marine Insurance in England.—While it is of interest to trace the growth of marine insurance in Continental Europe, the American student is more deeply interested in the rise and growth of insurance in England. Our system conforms more closely to the system common in England where marine insurance has reached its highest development than to that of the Continental countries. England, the last of the European countries to obtain prominence as a commercial nation, has now outstripped them all and is the mistress of the seven seas. Two streams of influence shaped the commercial and incidentally the marine insurance development of England. The earliest influence was that of the Hanseatic League which for nearly five centuries controlled to a large extent the foreign commerce of England. The later influence was that of the Lombards, who, driven out of their

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homes in Italy, settled in various parts of Europe, many of them finding refuge in England.

The Hansa Merchants and the Steelyard.—The Hansa merchants found in England a fertile field for the practice of their efficient commercial methods, because the English monarchs in the early history of the country were more interested in fighting their neighbors and in defending themselves from attacks at home and abroad, than they were in the development of the country. Incidentally, these English kings were always in debt and they found the Hansa merchants accommodating lenders at first, but severe task masters at last. These merchants established themselves in London in what was known as the Steelyard, a group of buildings in which they lived and stored their merchandise. They lived under the strictest discipline. They neither married nor were they permitted to associate with the gentler sex. They were commercial monks, living a narrow but a luxurious life, for all that was best of every land came to their hands. Their rules and regulations were not only for the personal government of the members, but related also to the commercial and political affairs of the organization. They entered England in the tenth century and three hundred years later were the favorites of English Royalty, and for a time at least, practically controlled the trade of England. But such consideration on the part of England's kings could have but one result. The first signs of the coming commercial superiority of the English people were beginning to show and the native merchants rose in their wrath to drive out these Teutonic tradesmen. The men of the Steelyard, however, were deeply entrenched in the commercial life of England and it was only after a bitter struggle that these traders were finally banished and the wonderful era of commercial progress was ushered in with the coming to the throne of Queen Elizabeth. Disliked as these Hansa traders were by the English merchants, they helped in large measure to lay the foundations of that overseas trade which has made England the commercial leader of the world. The members of the Hansa League practised marine insurance and probably introduced into England this branch of commercial activity.

The Lombards in England.—The Lombards, whose impress is deeply marked on the commercial history of England, while

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engaging to a certain extent in overseas commerce, reached their highest success as money lenders. They too, having funds with which to finance the wars of England's Kings, found great favor with them and received many privileges not accorded to the native citizens. The first great wave of Lombard traders reached the shores of England about the middle of the thirteenth century and as their power and wealth increased many of their fellows from Lombardy and other places on the Continent joined them. The men of England, however, were highly incensed against these "usurers." In order to satisfy the demands of the people the Kings of England issued many edicts for the control of the Lombard bankers. The Kings themselves, nevertheless, continued to borrow from them, regardless of the fact that the rates charged on their loans violated their own decrees. Not only did the Lombards become money lenders to Britain's monarchs, but they also were the fiscal agents of the Pope, selling pardons and collecting and remitting to Rome the revenues of the Church.

Lombard Street.—Prospering greatly but nevertheless being persecuted by the public, the Lombards petitioned King Henry IV to grant them a section of the City of London in which they might build their homes and conduct their trade in security. The King, probably in return for some financial accommodation, granted their petition, and there was allotted to them a portion of ground, on which the Lombards built their homes and which took the name of Lombard Street. This street has become famous in marine insurance history, and even to this day there appears in the Lloyd's form of policy this clause:

"And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London."

Departure of Hansa Merchants and Lombards.—Little information is obtainable in regard to the commercial and insurance transactions of the Lombards, but it is certain that with the decline in power of the Hansa merchants in Europe, the Lombards gained a considerable part of their trade and at the close of the fifteenth century much of the overseas commerce of England was

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in their control. This is evidenced by an Act of Parliament of 1483 and by subsequent Acts reciting the evil practices of the Italian merchants and endeavoring to curb their activities. With the coming of the day of England's commercial awakening, the Lombard's power began to decline. Gradually the Italian merchants quitted England, some returning to their ancestral homes, others finding new fields of activity in the Continental countries.

Influence of Foreign Merchants.—While the Hansa merchants left their greatest impress on the bartering side of trade, the Lombards firmly established in England the banking and insur ance branches of commercial activity. Marine insurance introduced into England by the Hansa merchants was perfected by the Lombards, and at the time of their passing from England the practice of this branch of mercantile endeavor was well established.

First English Marine Insurance Statute.—In the forty-third year of the reign of Queen Elizabeth, in December, 1601, four years after the last of the Hansa merchants had left England, there was passed by Parliament "An Acte concerninge matters of Assurances amongste merchantes." This Act stands as a landmark in the history of marine insurance, not because the law itself had any very great influence on the course of the business, but because it is the first English Statute in regard to marine insurance. The purpose of this act was the establishment of a special court for the trial of marine insurance cases in order to expedite their adjudication. The court although regularly organized was little used, merchants preferring to have their cases tried in the regular courts. It is interesting to note the preamble of this statute, which reads in part as follows: *i.e.*,

"Whereas it ever hathe bene the policie of this realme by all good meanes to comforte and encourage the merchante, therebie to advance and increase the general wealthe of the realme, her majesties customes and strengthe of shippinge, which consideracion is nowe the more requisite because trade and traffique is not at this presente soe open as at other tymes it hathe bene; And whereas it has bene tyme out of mynde an usage amongste merchantes, both of this realme and of forraine nacyons, when they make any great adventure (speciallie into remote partes) to give some consideracion of money to other

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persons (which commonlie are in noe small number) to have from them assurance made of their goodes, merchandizes, ships and things adventured, or some parte thereof, at suche rates and in such sorte as the parties assurers and the parties assured can agree, which course of dealinge is commonlie termed a policie of assurance; by means of whiche policie of assurance it comethe to passe that upon the losse or perishinge of any shippe there followethe not the undoinge of any man, but the losse lightethe rather easilie upon many than heavilie upon fewe, and rather upon them that adventure not than those that doe adventure, whereby all merchante, speciallie the younger sorte, are allured to venture more willinglie and more freely."

In a later part of this Act reference is made to causes "arisinge out of pollicies of assurance, suche as now are or hereafter shall be entered within the office of assurances within the Citie of London," indicating that the Continental system of officially recording policies was followed in England.

Individual Underwriters.—At this time underwriting was done by individuals, many of whom were bankers or money lenders and adopted underwriting as an additional method of employing their funds. These men had no general gathering place, but policies were carried around by brokers, who obtained from each underwriter his acceptance of a share of the risk. Each individual noted on the policy the amount of liability which he assumed and signed his name; hence the term *underwriter*.

Lloyd's Coffee House and Lloyd's News.—The introduction of the use of coffee and with it the establishment in London of coffee houses, where the beverage was dispensed, had a decided effect on the course of marine insurance in England. Notwithstanding an ordinance of Charles II closing the coffee houses on the ground that they were breeding places for sedition against the government, these gathering places continued to prosper. Some of them became the meeting places of merchants and mariners where, over the fragrant cups of coffee, the latest marine news was discussed. One of these houses was conducted by Edward Lloyd, a man of no mean ability who, seeing that this marine gossip might be of general interest, began in 1696, the publication of "Lloyd's News." This small sheet, most of the numbers of which are to be found in the Bodleian Library, represents the germ idea from which has grown the present news

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service of Lloyd's, London. After the publication of seventy-six numbers, the government, angered over some item appearing in the "News" stopped its publication. Thirty years later the paper again appears as Lloyd's List and under this name is still published.

A Meeting Place of Underwriters.—Gradually Edward Lloyd's coffee house became the meeting place of many of London's Underwriters and here they underwrote their risks. Not only was underwriting carried on in this coffee house, but ships were sold and merchandise was auctioned. Merchants and shippers frequented its rooms and all kinds of business incidental to shipping was transacted. Advertisements appearing in papers published in the early years of the eighteenth century constantly refer to this coffee house as the place of sale of ships, goods, real estate, and stocks, and as the meeting place of the stockholders of associations. Lloyd's coffee house was indeed the mart of many kinds of trade and the story of its evolution into the modern London Lloyd's is one of the interesting chapters in commercial history.

Insurance Companies Organized.—In a day when the English people had run wild in the incorporation of companies for the doing of every conceivable thing, at a time when the South Sea Bubble was expanding but had not yet burst, it is not surprising that the field of marine insurance was invaded and efforts made to do corporation underwriting. Individual underwriting had by this time, the early part of the eighteenth century, brought fortunes to not a few. The security for the insurance was, however, individual security and it did appear that better protection could be given by a corporation with a definite known capital under the control of the government. Not only would this better security be given, but the profits arising from the conduct of the business would be distributed to many persons, owners of the stock of the corporation. The underwriters who congregated at Lloyd's coffee house and others who had private offices earnestly opposed the establishment of a chartered marine insurance company. Many arguments pro and con were advanced, those petitioning for the incorporation claiming that many individual underwriters failed and could not pay their obligations, a charge not well substantiated. On the other hand,

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underwriters proved that the business could be better carried on by individuals, since its conduct required personal skill and experience which a corporation could not give. They also showed that underwriting was not practised on the Continent by corporations and that the existing system had adequately met the needs of England's growing commerce. The House of Commons sided with the underwriters and the project died down only to be revived in 1720, when a new and always powerful argument was presented on behalf of the petitioners, who on this occasion sought the establishment of two corporations. The finances of England were in an embarrassing condition, owing to the civil list being burdened with heavy debts which Parliament was unwilling to pay. The incorporators therefore skillfully proposed that in exchange for the granting of the two charters, including a monopoly of corporation underwriting, they would pay into the exchequer for the discharge of debts on the civil list the sum of £600,000. This proposal struck a responsive chord in the heart of King George I, and a Royal message was sent to the faithful Commons strongly recommending the passage of the bill granting the two charters.

The Monopoly.—Notwithstanding serious opposition, the bill became a law and charters were granted on June 24, 1720 to the London Assurance Corporation and the Royal Exchange Assurance Corporation. These two companies thus received the exclusive right and monopoly as corporations, of insuring ships and their cargoes. The fears of the individual underwriters that their business would be ruined proved groundless. The volume of business obtained by the corporations was small, and, in the early years of their operation, the results were unsuccessful. By a saving clause in the bill which provided for the monopoly, the charters were subject to forfeiture if the installments of the £600,000 payment were not forthcoming at the dates provided. The companies failed to make the payments as required, but owing to the influence of their sponsors, Parliament reduced the debt to £150,000, which sum was ultimately received by the Government.

Growth of Marine Insurance. Lloyd's.—For the next hundred years during which the two corporations made a slow growth, the business of the individual underwriters increased by leaps

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and bounds. Instead of being a hindrance to these underwriters, it was soon seen that the monopoly was a protection to them in that it prevented the establishment of other competing companies. In 1769 the underwriters who congregated at Lloyd's coffee house formed a definite organization and obtained the control of Lloyd's List. One object of the organization was to stamp out the gambling which, under the guise of insurance, was being carried on at the Coffee House. Such insurances concerned every conceivable subject from the result of a political election to the probable duration of the life of a prominent citizen who might be sick and dying. The underwriters thus organized under the name of "Lloyd's" moved to the Royal Exchange, the idea of the coffee house still being continued. The control of this particular part of the organization was vested in a head waiter and his two associates, who cared for the physical needs of the members "at Lloyd's."

Standard Policy Adopted.—From this time on Lloyd's became the underwriting center of London. Controlled by men of great ability and integrity, resolutions were passed condemning the underwriting of gambling policies. These resolutions were observed by the greater portion of the membership and Lloyd's gained a reputation for fair dealing, which aided not a little in the phenomenal success which came to its members. In 1779 at a meeting of Lloyd's, a uniform printed form of marine insurance policy was adopted and all the members agreed to its use. The Resolutions passed by Lloyd's embodying this form were submitted to Parliament and were approved by that body. Lloyd's form thus became the official English form of marine insurance policy.

Increase of Individual Underwriters.—At the time of the adoption of this form of policy marine insurance was increasing greatly owing to the American War which made overseas commerce extra hazardous and led many to insure who formerly "ran their own risk." This war and those which followed occupied the attention of the English people almost continuously for a period of fifty years. During this time England developed into a great nation and the prosperity which came to the country was not without its effect on the underwriting fraternity. Wealth made, not without great hazard but in large volume, attracted many

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merchants into the underwriting field, some of whom would stake tens of thousands of pounds on a single venture. The rates of premium charged during this period remind one of those which were received during the World War. History has also repeated itself in that there were in both cases, certain leaders in the market who established rates, others relying on their superior judgment and blindly following them.

Efforts to Incorporate New Companies.—The natural consequence of this great prosperity was the desire on the part of many to enter the marine insurance field as corporation underwriters, but the monopoly created in 1720, proved an effective barrier to such efforts. The two corporations and the underwriters at Lloyd's were now business friends and no longer rivals and jointly resented all efforts made to break the monopoly. Business had naturally gravitated to Lloyd's as the companies, while engaging to some extent in marine insurance, preferred the fields of fire and life insurance with their surer rewards. The original grant of monopoly in its saving clause permitted the termination of the special privilege if it were found at any time that the monopoly was "hurtful or inconvenient to the public." Relying on this phrase, in 1798 the directors of the Globe Insurance Company who wished to enter their company in the marine field petitioned Parliament for a repeal of the monopoly, but, opposed by the power of Lloyd's, the petition died in committee. Making new efforts in 1806 and 1807 the Globe Company was again defeated and ceased from its efforts. Again in 1809 a powerful group of men petitioned for the repeal of the monopoly, but they too were unsuccessful. This time, however, the question was thoroughly discussed before Parliament, able speakers advocating, respectively, both the repeal and the retention of the monopoly. From the debates one gains a very clear view of the state of marine insurance in England at this time and a very clear presentation of the powerful position which Lloyd's had assumed. However, the most potent argument presented by the opposition in the mind of the House of Commons was that the repeal of the monopoly would not only injure Lloyd's, but would probably destroy the "system of commercial intelligence" of Lloyd's which was not only essential to marine insurance but to commerce in general. Frederick Martin in his history gives a detailed account of these

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debates, together with pen pictures of some of the leading figures in the marine insurance world at that time. During the investigations made at this time by the special committee of Parliament, much evidence was presented showing that insurance frauds were exceedingly common at this period. This was largely caused by the fact that the punishment meted out to such offenders was not commensurate with the gravity of the offenses.

Lloyd's Reorganized.—The efforts made to defeat the repeal of the monopoly brought home to the members of Lloyd's various defects in their own organization. As a result a committee was appointed and a new constitution was drawn up and adopted providing rules for the admission of members, their government and for the care of the meeting place of the organization. These rooms were still operated on a modified plan of the old coffee house idea. The control of the organization was vested in a governing committee of twelve, who were charged among other things with the duty of appointing Lloyd's Agents. The post of Lloyd's Agent in a foreign port had by this time become a position of honor, much sought after, and men of the highest standing in their respective communities occupied these positions. The work of these agents did much to stamp out shipping frauds and the wealth of commercial information gathered from their reports was of immeasurable value, not only to the commercial world, but to the Government as well.

The Monopoly Repealed.—The insurance monopoly was finally broken on the 24th of June, 1824. The circumstances leading up to the repeal of this Act (the 6th of George I) are not without interest and show how slight incidents sometimes have great results. Nathan Rothschild, son of the great German banker, had emigrated to England and there became a commercial and financial power. His brother-in-law, Benjamin Gompertz, a distinguished mathematician, sought the appointment to the vacant post of actuary of a large insurance company, but failed because he was a Jew. He appealed to the powerful Nathan, who, infuriated at this slight to his religion, vowed that he would create a bigger company than any existing and provide a better position for his relative than the one he sought. Immediately gathering together some of his prominent and influential friends, Rothschild organized the "Alliance British & Foreign Fire and

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Life Assurance Company" with a capital of £5,000,000. The shares of the new company under the magic of the Rothschild name were quickly subscribed. The directors then petitioned parliament for the repeal of the marine insurance monopoly so that the new company could engage in this branch of insurance. The main argument advanced for the repeal of the old Act was that competition in the marine insurance field might be free. The opposition argued that there was sufficient competition, there being over one thousand underwriters at Lloyd's, and that the creation of this gigantic company would throttle competition and a new monopoly would be created. Nevertheless the repeal of the monopoly was approved, but Nathan Rothschild had one further bridge to cross. The prospectus of the Alliance Company only providing for fire and life insurance, one of the members of Lloyd's, who had purchased fifteen shares in the new company, commenced suit against the directors to restrain them from entering the marine insurance field as a breach of the contract entered into between the directors and the subscribers, and the court upheld this view. Nothing daunted, Nathan Rothschild, immediately organized the "Alliance Marine Insurance Company," the active management of which was given to Benjamin Gompertz.

New Companies.—The fears of underwriters at Lloyd's that company competition would ruin their business again proved groundless. The public was slow to leave the old paths of marine insurance and the Alliance Company met with only moderate success. In 1840 finding that the huge capital of five million pounds was unnecessary, a reduction to one million was made. The subsequent history of marine underwriting in England is one of the organization of many companies and of the failure of most of them. However, now and again, records are found of the establishment of new companies which, carefully organized and managed, prosper and with the Alliance still aid in caring for the vast values which enter the English market seeking protection.

Marine Insurance Law.—No history of marine insurance in England would be complete were reference not made to the development of the law relating to this branch of commercial activity. The Continental nations were given to the codifica-

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tion of their laws, and, as already indicated, many commercial codes are found. The English legal mind, however, tended rather to draw conclusions from precedents than to bind itself by any definite code of laws. The court for the trial of insurance cases, organized in the reign of Queen Elizabeth, never achieved its object. Merchants and underwriters preferred the regular courts of law. In these courts the judges decided cases by considering the Continental codes and the usages of merchants in England respecting the case in point, drawing their conclusions and basing their judgments on these precedents. It is interesting to note that up to the middle of the eighteenth century there appear in the English court records less than one hundred cases relating to insurance. It is not reasonable to presume, in view of the growth of marine insurance, that this is any indication of the fact that disputes did not arise in connection with marine insurance transactions. Rather does it indicate that merchants were not satisfied with the learning of English jurists of this time and preferred to settle disputes out of court by arbitration or by some other method of reference before men experienced in the customs of commerce.

Lord Mansfield.—In the year 1756 there ascended the bench as Lord Chief Justice of England the Earl of Mansfield and for thirty-two years thereafter he molded and clarified English law. Of broad knowledge and of keen intellect he took insurance law as he found it, both in the English precedents and in the Continental codes, and applied it in the light of commercial customs and usages to the cases presented to him, and developed a body of law which is today the basis of both English and American practice. Mr. James Allen Park in 1786 published, with the approval of Lord Mansfield, a work entitled "A System of the Law of Marine Insurance," which gathered together the English decisions, especially those of Lord Mansfield. This book in which the decisions are divided into groups relating to the various branches of marine insurance law is still a work of great value and is the basis of many of the English and American law books on the subject.

The Marine Insurance Act, 1906.—The need of a definite code on the subject of marine insurance was often brought to the attention of Parliament without any degree of success. As

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time passed and the decisions grew in number, inconsistencies crept into the law and it was difficult indeed to know whether or not one stood on firm ground. The laws which Parliament did pass in regard to marine insurance merely sought to prevent gambling practices or related to stamp taxes. In the latter years of the nineteenth century several efforts were made to pass a bill codifying the English Law, and for twelve years the question was before Parliament, various committees considering these measures. Finally in 1906 the Marine Insurance Act was passed, followed in 1909 by the Marine Insurance (Gambling Policies) Act. These two acts are now the controlling law of England with respect to marine insurance. The Gambling Policies Act has quite effectually stamped out the dealing in wager policies which, prior to the enactment of the law, were engaged in by all classes of the English people.

Early Underwriting in the United States.—The history of marine insurance in the United States is rather colorless. Closely joined to England by ties of blood and of custom, it is not surprising that in the early history of the Colonies insurance on American risks was placed with English underwriters. Early in Colonial days, however, some effort was made to establish a local market. In 1721 one John C. Capson inserted in the American Weekly Mercury of May 25th published in Philadelphia, an intimation that he was about to open an office of public insurance on vessels, goods and merchandise. He stated that "the merchants of this city of Philadelphia and other ports have been obliged to send to London for such insurance, which has not only been tedious and troublesome, but ever precarious, and for the remedy of which this office is opened." Four years later another office was opened in the same city by Francis Rawle. Of the success of these offices little is known, but it is certain that for many years thereafter no record is found of any attempt to establish a marine insurance office. In New York City an insurance office was opened in 1759 and in 1778 we find the New Insurance Office entering the underwriting field. All of these offices were conducted on the English plan of individual or partnership underwriting, incorporated insurance companies not yet entering the field.

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First American Insurance Corporation.—In 1792 there was organized in Philadelphia, then the commercial metropolis of the new United States, the first incorporated company for the transaction of fire and marine insurance, the Insurance Company of North America to which a formal charter was granted on April 14, 1794, by the General Assembly of Pennsylvania. The early history of this company is closely interwoven with that of the nation itself, and it is greatly to the credit of the management of the company that it was able to survive, considering the wars and rumors of wars which disturbed the early years of the American Republic. After a very unsatisfactory experience with private underwriters, of whom at least fifty operated in the City of Philadelphia, merchants welcomed the new company and business flowed to it in a constantly increasing stream.

Corporation Development.—The corporate system being initiated, the idea spread rapidly and soon similar organizations were being formed in New York, Boston, Baltimore, New Haven, Charleston, and Newburyport. These and other companies soon after formed met with a reasonable degree of success for a time, owing to the prosperity which attended shipping interests in the early years of the country's history. The Napoleonic Wars greatly disturbed the peaceful conduct of commerce and caused a great demand for insurance. War has ever been a stimulant to the marine insurance business, bringing as it does increased hazards and correspondingly increased premiums. It does not necessarily follow, however, that such periods are periods of prosperity for marine underwriters, and these early wars with their consequent heavy losses at times brought many insurance companies to the verge of ruin. During the first ten years of the existence of the Insurance Company of North America, the average premium rate was twelve percent, but the payment of losses absorbed over ninety-one percent of the premium income. Periods of partial prosperity followed those of adversity, but with the opening of the war of 1812, the marine market again faced disaster. The shipping of the United States to a large extent being driven from the seas, marine insurance declined, not to be firmly reëstablished for thirty years, when with the growth of a new merchant marine, insurance again became a profitable employment for capital.

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Competition Among Companies and Failures.—The high premiums resulting from our own war and those which preceded it, had attracted into the field many companies which met with little success. The dawn of peace in 1815, with its attendant loss in war premium income, inaugurated a period of bitter competition. The volume of business was insufficient to employ the capital invested and in the endeavor to obtain a share, companies wrote risks at inadequate rates, with the inevitable result that many of them failed. Then too, those who were managing the companies lacked financial insight and in an endeavor to pay dividends neglected the creation of surplus funds to aid in this day of disaster. Lack of governmental control permitted these and other abuses to exist and grow. This thirty-year period was in fact a testing time for the whole country. The new nation was suffering its growing pains and was making all the mistakes of adolescence.

The Clipper Ship and Insurance Frauds.—The merchant marine had been gradually reviving and shipowners were obtaining a new measure of prosperity. With a virgin country amply supplied with woods fit for shipbuilding, it was but natural that from the earliest days the people should turn to shipbuilding. Models were improved as time went on and finally the clipper ship, the glory of the American Merchant Marine, was produced, and won from the ships of all the world the mastery of the sea. The renaissance of the merchant marine preceded by some years the revival of profitable underwriting. Between 1828 and 1844 the companies were seriously crippled by many fraudulent losses occurring in the West Indies and the Gulf of Mexico. Owing to the lack of cohesion among the companies, however, it was not until 1844 that any concerted action was taken to control these losses. In this year the Philadelphia underwriters formed a protective organization, one of the main purposes of which was the prevention of fraudulent claims.

Marine Insurance Revives.—Following the panic of 1837 with its attendant failures, those companies which were able to weather the financial storm entered on an era of prosperity which continued for about twenty years. The American clipper ship was now developed to the point where it wrested most of the overseas carrying trade from England and the Continental

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countries. The ships and their cargoes being American owned, it was but natural that the marine insurance should be placed with American underwriters. New companies were organized, many of them meeting with phenomenal success. The voyages of the clipper ships, while short, judged by standards of that time, were long compared with steamer voyages, and the rates of premium accordingly were high. So well built were these ships and so skillful were their masters that the insurance produced a handsome profit to the underwriters.

The Civil War.—This era of prosperity was, however, short-lived. England, somewhat baffled by the success of the clipper ship, sought for some antidote, and found it in iron as a medium for construction and in coal as a producer of motive power. Soon metal ships steam propelled were navigating the seas and the glory of the clipper ship began to fade. Slow to develop her untold resources of iron and coal, the United States began to decline as an overseas carrying nation. Before American shipbuilders realized that iron and coal were to control overseas commerce, the nation was engulfed in the Civil War, which added impetus to the decline of the American Merchant Marine and carried with it the decline of most of the insurance companies and the fall of many. Burdened by heavy taxation and deprived of the large overseas traffic in farm products, especially cotton, American shipping and its allied interests, were terribly crippled. Great Britain, not slow to grasp her opportunity, entered a new era of shipbuilding and ship operating. Her new metal vessels propelled by mechanical power were soon produced in great numbers and before many years carried much of the overseas trade of the United States.

Foreign Companies Enter the United States.—Handicapped by the period of reconstruction following the Civil War and prejudiced by the attitude of foreign classification societies which discriminated against American built vessels, the American merchant marine steadily declined and with it the fortunes of the marine insurance companies which had survived the war. To further add to the burdens of the companies, short-sighted legislation permitted the entrance of foreign insurance companies into the American market on terms which further militated against the success of the American companies. The first

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British Company entered New York state about 1871, quickly followed by many others. These companies had been organized for many years, were carefully managed, had large surpluses and immediately began a drive for American business by cutting rates. The American Companies not so well prepared to meet this sort of competition were gradually forced out of the marine business. Some were liquidated, others which did both a fire and a marine business devoted their efforts solely to fire insurance. The lesson in this trying period of marine insurance development in the United States has not yet been fully learned. Companies still fail to maintain adequate surpluses and often carry as assets doubtful items and as liabilities amounts much too small to properly care for unadjusted losses. Rigid state supervision has done and is doing much to correct abuses of this nature.

Decline of American Merchant Marine.—When this period of competition had passed, the American market was composed of a very few American companies and a comparatively large number of British companies. Much of the cargo business to and from the United States was insured in the American market, but the hull business was to a great extent placed in the British market and British underwriters prescribed the form of policy on which such insurance was written. By this time less than ten percent of the overseas commerce of the United States was carried in American vessels. As trade follows the flag, so, too, marine insurance protection, which is but one element in the conduct of trade, is ordinarily furnished by citizens of the same flag, with the result that marine insurance was diverted from the American market.

The Marine Insurance Market Broadens.—The last years of the nineteenth century ushered in a new era in the history of the United States. Following the period of depression commencing in 1893, there was a tremendous revival of American trade. After the Spanish-American War the nation found itself a World Power with new responsibilities and with new commercial fields to conquer. The coastwise trade of the United States, wisely restricted to American vessels, increased greatly. New vessels were built, both on the Seaboard and the Great Lakes. Gradually the American marine insurance market obtained a larger and larger share in this hull business and eventually

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through underwriters' organizations has determined rates and conditions for the conduct of this business, which the British market has followed.

Little American Capital Invested in Marine Companies.—Notwithstanding the gradual control which the American market obtained in the conduct of local business, it must not be forgotten that the larger part of the capital employed in the Atlantic, Lake and Pacific marine insurance markets was foreign capital and the profits on this business, in large part, were received not by American investors, but foreign shareholders in companies domiciled in this country. In the other branches of insurance, although foreign companies had entered the field, most of the capital invested was American. Profits while perhaps small were reasonably certain in all departments of insurance except marine, and the fair profits of some periods were not sufficient inducement, in view of the history of the business, to attract American capital into the marine field.

Steady Growth of Marine Insurance.—Thus a gradual growth and strengthening of the marine market appears in the first thirteen years of the twentieth century. A few new American companies were organized, and the market as a whole reflected in some small measure the prosperity and expansion of the United States. Stricter regulation by the State Governments was enforced, but no effort was made either locally or nationally to protect American companies against the encroachment of foreign competition. Neither was any real effort made to foster American shipping by governmental aid. On the other hand, through efforts made to aid seamen, laws were passed which succeeded in driving most of the American vessels in the foreign trade, to seek registry under foreign flags. This was in brief the condition which existed when the World War commenced.

The World War and New American Companies.—Stunned by the outbreak of the war, all commercial activities were for a time disorganized, but gradually recovering poise, the need for ships and for American insurance became insistent. Bankers were unwilling in many cases to accept the insurance certificates of companies of belligerent countries and many American companies, formerly confining their activities to fire insurance, entered the marine field. New companies have been organized

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and many of Scandinavian, Spanish and other neutral nationalities have established themselves in the American market. The increased value of tonnage and the doubling and trebling of cargo values, with the enormous increase in the rates of freight, have created a demand for marine insurance which at times has taxed to the utmost the insurance markets of the whole world. The New York market, where before the war about thirty companies were actively engaged, now boasts over one hundred. Limits of a few hundred thousand dollars formerly exhausted the capacity of this market, where now a million dollars is easily placed. While the entrance of the United States into the war, with the attendant commandeering of ships and goods depressed the activity of the marine insurance market, the extensive shipbuilding program of the country, with the future prospect of an American Merchant Marine, representative of the greatness of the United States as a commercial power, presages a golden future for the practice of marine insurance.

The Future of Marine Insurance in the United States.—Whether or not this prospect of the future will become a reality, depends in large measure on the wisdom of those who mold our public opinion and who make our laws. The history of marine insurance in the United States is noted for the paucity of laws interpreting the law of marine insurance and for the control of its conduct. An insurance code drawn up as part of a suggested legal code for the State of New York failed of adoption in 1865, but forms the basis of the insurance law of California, enacted in 1873. Laws affecting insurance are in force in most of the States, but they are more regulatory than explanatory, especially in their reference to marine insurance. However, the States in many cases have not been slow to tax marine insurance companies in such a way that the domestic company suffers a disadvantage over the foreign company. Then, too, American underwriting is handicapped by insurance placed with foreign non-admitted companies which enters this country on very advantageous terms, paying only a small tax. If marine insurance, now firmly established in the American market, is to retain its prestige, it must have a fair competitive field. European nations long ago realized that marine insurance was one of the handmaids of commerce and by fostering laws have strengthened and

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encouraged its growth. Dealing in large part with interstate and international commerce, it would seem natural that the control of this branch of commerce should be vested in the Federal Government rather than in the State Governments, which often times working at cross purposes, interfere with the legitimate growth of the business by burdensome taxation and double taxation. The same result could be accomplished, perhaps, by uniformity of state laws in regard to marine insurance and measures looking to this end are already in contemplation in connection with the National Association of Insurance Commissioners. Federal laws placing American companies on the same basis as foreign companies domiciled here and making marine insurance entering this country from abroad through the mails, subject to reciprocal taxation would do much to establish on a firm foundation a business which is as essential to the growth of our commerce as is the building of ships and the strengthening of our banking facilities.

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CHAPTER 1

PHYSICAL GEOGRAPHY IN ITS RELATION TO MARINE INSURANCE

Effect of Natural Conditions on Trade Routes.—Marine insurance having been originated for the purpose of distributing losses caused by the physical forces of nature operating on and about the oceans, it would seem fitting for the student of the subject to acquire at the very outset some general knowledge of these elements. Man from the earliest days has battled with these forces, sometimes going down to defeat, only to rise again to devise some new method of conquering them. If he could not overcome these adverse conditions of nature then he sought means to avoid them or to accommodate himself to their effects. The earliest trade routes were overland, following the paths of least resistance. Thus, if there were hills, or lakes, or forests intervening in the direct path of his journey, primitive man would avoid these obstacles by going round them. Man, however, differing from the beasts of the field in being a thinking animal, soon began to create rude devices for overcoming the obstacles in his commercial paths. A trail would be cut through the forest, a rude craft would be built to cross a lake or river, thus avoiding the necessity of encircling these barriers. His rude craft, however, encountering the winds, waves and currents found on the lakes and rivers soon showed its defects and a stronger vessel was built.

Water Routes.—Since water routes offered the easiest means of communication between the settlements of primitive man, it is but natural that he should have discovered means of navigating these highways. The overcoming of the simple physical forces operating on the inland waterways was a comparatively easy task, and the natural love of adventure coupled with the desire for barter, in the course of time led man down to the larger seas and finally to the oceans where he found the mighty forces of the deep aiding him in their periods of calm, but when unleashed

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threatening him with destruction. Gradually he acquired a knowledge of these physical barriers which hindered the unrestricted use of the waterways, but not having developed sufficiently to devise means of overcoming them, he was compelled to skirt along the shores of the continents in his rude craft, darting from headland to headland seeking shelter in time of storm and laying to at night. Often to avoid treacherous stretches of water, man would drag his rude craft overland, or tranship his cargo over a neck of land to calmer waters beyond.

Natural Law Discovered.—The growth of commerce created the desire for easier and safer routes of travel, and men began to study the forces of the universe in order to control them. Certain individuals in advance of their generation began to discover that there was such a thing as law in nature and that these natural forces, untamed as they seemed to be, were but the effects of the sun and the moon and the stars. They discovered the rudiments of astronomy and by means of the stars were enabled not only to navigate at night, but to navigate during the darkness away from the coast lines and over the broad expanses of inland seas such as the Mediterranean. It was also discovered that the earth instead of being flat was round and there were mariners courageous enough to brave the terrors of the unknown oceans in an effort to prove that by sailing West the East Indies, the fabled land of the Middle Ages, could be reached.

Ocean Navigation.—Once entering the mighty expanses of the oceans, the hardy mariners discovered that the physical forces which they had encountered on the inland seas, were magnified many fold. In these great bodies of water vast flowing streams were found, and over their surface were belts of wind and sections of calm. Then again the physical forces would be unloosed and the surface of the deep would become a raging maelstrom in which they would be all but engulfed. The faith of these pioneers being vindicated by the discovery of America and of the ocean routes to the East Indies the overcoming or circumventing of these physical forces became increasingly necessary, if man was to obtain the full use and enjoyment of his world. Gradually gaining knowledge by experience, in time, the laws governing the action of these forces of nature have been

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determined and their effects discovered. By applying this knowledge to navigation, types of vessels have been developed able to resist the action of these forces. As the localities and times of greatest danger became known, these were avoided. Not only has this been done, but man has gone further and has adopted these forces for his own use and has laid out his water routes over those portions of the oceans where he can be aided by the winds and the currents.

Aids to Navigation.—With the development of commerce and the establishment of more stable political control, governments have lent their aid in charting the oceans, in establishing light houses on dangerous coasts and in providing a weather service which warns mariners of impending storms. Scientific societies by many devices and by especially designed and equipped ships have added greatly to the store of knowledge in regard to the ocean and much has been done to aid in the safety and certainty of ocean navigation. Great as has been the progress much remains yet to be done. The knowledge now attained and the progress already made in ocean navigation merely encourage further research in an effort to better comprehend the workings of nature and to overcome or to turn to the use of man the powerful forces which nature has let loose on the broad expanse of the ocean.

Effect of the Oceans on Climate.—That the task is a stupendous one, may be appreciated if thought is given to the vastness of the oceans, and to the distances covered in the negotiation of the ordinary routes of commerce. Seventy-two per cent of the earth's surface is covered by water ranging in depth from a fraction of an inch to six miles and stretching from the equator to the poles. This enormous expanse of water with its tides and currents, its winds and storms not only separates the land masses but also determines to a large degree their climates and to a very great extent has influenced man's development. This may readily be seen by comparing land masses in the same latitudes. The British Isles bathed by the warm waters of the Gulf Stream are a veritable garden while in the same latitude, Labrador, whose coasts are washed by the Arctic current, is a frozen waste. Not only is climate affected, but the variation of temperature is controlled by the oceans, making

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life more enjoyable. In far inland sections very wide daily and annual ranges of temperature occur, while in the vicinity of the oceans the slow heating and cooling water exercises a controlling influence on the temperature.

Ocean Distances are Great.—The distances over the routes of commerce between the various centers of human endeavor, following as they do the lines of least resistance, are very great. From Liverpool to New York is about 3000 miles while the distance from New York to the River Plate is 5700 miles. Again from New York to Sydney, Australia is 13,000 miles when the Cape route is used and 9700 miles if the shorter Panama Canal course is followed. A steamer traveling from Seattle to Yokohama covers 4250 miles, and another 1725 miles is traversed if it continues on to Manila. Even the distances of inland waters are not often appreciated, the distance from Duluth, Minn. to the mouth of the St. Lawrence being about 1675 miles, and from the head of navigation on the Mississippi to the Gulf of Mexico 2150 miles. From New York to Iquitos, Peru, on the Amazon River is 6000 miles and 2400 miles must be covered in sailing from Seattle to Nome, Alaska.

The Physical Force of Nature.—It is with the physical forces of nature, however, that marine insurance is concerned. Were the waters always calm, were there no fogs or currents, there would be little need for insurance except against fire and man's own acts resulting in collisions and war perils. But with the possibility of nature letting loose her weapons at any time some means of indemnity against the destruction caused by her forces is necessary. A description of these forces will give an indication of the problems with which a marine underwriter is confronted.

The Wind and Storms.—First may be considered the wind. The atmosphere is ever in motion and man has learned to use this movement for the propulsion of his craft. In the earliest times he devised a rude form of sail to aid the oarsman in the movement of his vessels, but soon wind power displaced man power. Atmospheric conditions, however, control the velocity of the wind and when conditions are ripe storms break forth under which the sturdiest ships may succumb, or they may be wrecked or driven on dangerous coasts through the effects

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of these storms. While there are storms which are sporadic, there are other storms which are periodic. These periodic storms occur most frequently in the Tropics, those in the Atlantic Ocean being called hurricanes while those in the Pacific Ocean are called typhoons and in the Indian Ocean monsoons. There are belts of wind known as the Trade Winds which blow constantly at a velocity of from ten to thirty miles an hour, and are found between 28° north and 28° south of the equator. These winds blow from the northeast in the northern hemisphere and from the southeast in the southern hemisphere. North and south of the Trade Winds are other belts of wind known as the Westerlies. These winds in the Southern Hemisphere are fairly constant between latitude 40° and 50° South blowing from the southwest and are known to sailors as the "Roaring Forties." It is interesting to note in this connection as showing the effect of winds on ocean trade routes, that a sailing vessel in going from New York to Sydney, Australia, sails southeast until the island of Tristan da Cunha is reached in latitude 37° South and then taking advantage of the short lines of latitude and of the power of the "brave west winds," the Roaring Forties, runs before the wind. If the destination is Bombay instead of Sydney the vessel will turn north at about longitude 80° East and taking advantage of the Monsoons, seasonal winds of the Indian Ocean, speed north. In the Northern Hemisphere the westerly winds are not constant, and produce the exceedingly severe storms encountered in the North Atlantic. The causes of these winds are many and these belts of wind move north and south with the changing seasons. In between these wind belts are areas of calm, the doldroms, which also move with the seasons, and it is in these sections of calm at the seasonal changes that the hurricanes and typhoons originate. These storms which last at times for weeks are of such severity that only the staunchest ships can outride them.

Effect of Wind on Ocean Routes.—While the wind in the days of sailing vessels was the all important factor in determining the routes of commerce, it is only to a slightly less extent considered today in the laying out of steamship courses. The amount of resistance offered to wind pressure by a gigantic steamship is great and if this resistance can be avoided in the case of head winds or availed of in the event of following winds, fuel consump-

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tion will be reduced and an economic gain result, provided the distance between ports is not materially increased. Accordingly in looking at a map upon which are impressed the steamship routes the prevailing winds will be found to have been considered, as well as the ocean currents, of which mention will be made. In the North Atlantic for instance will be seen summer and winter tracks for steamers plying between New York and Liverpool. These courses have been determined to some extent by the prevalence of ice at certain seasons, but to a greater degree are the result of sailing vessel experience in choosing the most accommodating routes. The voyage across the Atlantic from New York to the United Kingdom, owing to the prevailing Westerly Winds and to the current of the Gulf Stream, is a much safer trip than the return passage, where the resistance of both these forces is encountered. For this reason it was said by sailors in the days of the sailing vessel that it was "down hill to Europe."

Wave Force.—One of the most powerful of the physical forces of nature is the wave. Caused principally by the wind and the tide this movement of the surface water exerts a power that is beyond measurement. Upon this force to considerable extent, depends the location of harbors. Many otherwise commodious havens have been rendered useless by wave action, and others have been saved only by the building of breakwaters or other devices, which curbed this natural force. It will also appear in the consideration of ships and shipbuilding that wave force is and has been one of prime consideration in the designing and construction of ships. While the appearance of the wave from the shore or from the deck of a vessel indicates that a great body of water is rapidly approaching, this is not the case. Were the appearance a reality ocean navigation would be almost impossible as the wave would be a current against which a vessel could not sail. On the contrary vessels ride the waves, the movement continuing under and beyond the vessel causing some retardation of the vessel's progress, but under ordinary conditions offering no serious hindrance to navigation. It is only when waves attain great size, speed, and height that they are a menace to navigation. Then unless a vessel is skillfully navigated to meet the onrushing waves serious results will ensue.

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The Power of Waves.—When it is considered that in severe storms waves attain a length of 1000 feet, a height of forty feet and move forward at the rate of 60 miles an hour some idea of their power is obtained. Waves have been described as a "transference of form not of substance." This is an accurate description. Wave motion may be likened to a movement of a field of grain in the wind. There is an appearance of wave motion, the heads of grain seem to move across the field but in reality merely crowd together, bend down and regain their upright position. So an examination of water movement shows that the particles of water move in orbits; each individual particle starts forward, rises, retreats, and falls, completing its orbit during the passage of a single wave.[1] The real menace in wave motion is when the movement is interrupted. When a wave strikes a ship and breaks over it, the weight of water falling on the vessel is measured in tons and unless the decks are properly constructed to quickly throw off this burden of water the vessel may sink. Many times a wave breaking against the ship will carry away its upperworks, admitting water into the holds and causing serious damage. Oil is often poured on the water when waves are becoming a menace to a vessel. The effect of oil is to smooth the surface of the water, thus presenting less resistance to the wind and preventing the breaking of the wave, which is the real danger in wave motion. The power of waves when their movement is arrested by harbor works or breakwaters is great beyond description. Waves have been measured with a pressure of three tons to the square foot. The havoc wrought by these storm waves may be seen on any shore and their action sets up shore currents which are a menace to navigation. When it is considered that Galveston was destroyed by a four-foot wave and that the water fronts of Mobile and other Gulf cities have been severely damaged many times in recent years by wave action caused by the West Indian hurricanes, some conception will be gained of the enormous power of waves.

Seaquakes and Tidal Waves.—Another form of wave which has done great damage to harbors and to shipping is that induced by "seaquakes." When an earthquake occurs the faulting of the earth may reach out under the ocean and the violent change

[1] Gregory, Keller & Bishop, "Physical and Commercial Geography," p. 6.

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in the ocean bed produces a difference of level in the water which results in a wave which causes the water to regain its level. This wave striking the shore carries all before it and many times ships have been carried inland so far that with the receding of the water it was impossible to restore them to their native element. These waves are usually called tidal waves, a term also used to describe the waves produced by the inrushing tide in confined bays. A combination of wind and high tide often produces a water level in a harbor greatly in excess of the normal, overflowing docks and causing heavy losses to marine underwriters.

Tides.—The action of the sun and moon working in conjunction on the water masses of the earth produce what are known as tides. This effect may be noted even in the smaller bodies of water such as the Great lakes of the American Continent. It is with this mighty force of the ocean, however, that marine insurance is concerned. While the tide originates twice daily in the Southern Ocean where the joint attraction of the sun and moon seems greatest, this great wave, nearly 6000 miles in length travels swiftly and effects the whole body of water. On the broad expanses of the ocean its effect is slight, but when more shallow water is reached, or where the moving masses of water are forced into small bays, or through channels its effect is tremendous. Whirlpools, eddies, rushing currents, and in some places high waves result which offer a serious menace to shipping and cause innumerable wrecks. Where the topography of the ocean bed produces bays connected by narrow straits high tide may occur in one bay at the same time as low tide in the adjoining bay. In the effort to reëstablish the water level the water rushes through the connecting channel producing currents known as eddies or races. These currents have ever been the dread of navigators. In early history we read of the Maelstrom of the Lofoten Islands and of Scylla and Charybdis in the Straits of Messina which were the terror of the early mariners. Modern seamen still shun the races at Pertland Firth and the Straits of Magellan. Hell Gate, Long Island, taking its evil name from its no less evil reputation has only been made reasonably safe for navigation by the removal at great cost of large masses of obstructing rock.[1]

[1] Gregory, Keller & Bishop, "Physical and Commercial Geography," p. 11.

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Effect of Tides on Harbor Development.—The effect of tides, however, is not altogether bad. In fact thay are the scavengers of the harbors, twice each day drawing out the unwholesome water and again sending back fresh supplies of ocean water. From the viewpoint of commerce, it is the effect of tide on harbor development that is of interest. As will appear later on, some of the most prosperous harbors owe their existence to the tide, whereas other harbors equally good in their virgin condition, because of lack of tidal flow never rise to positions of commercial greatness. In fact so important is the effect of tides on the usefulness of harbors that tidal almanacs are published giving navigators information to enable them to approach and enter harbors at the most favorable hour. The sailing and arrival of ocean vessels in most harbors is regulated by the ebb and flow of the tide, not only the depth of water but the strength of the current produced being determining factors in the movement of vessels. In many harbors ships can enter or depart only at the crest of the tide, while navigation in other ports is possible only at slack water. Not alone is the direct effect of tides of moment to navigators but indirectly the tidal currents quickly produce banks and channels in certain places making the charting of such water impossible, and necessitating the use of local pilots familiar with the vagaries of their particular locality.

Ocean Currents.—While the ocean water is constantly in motion owing to the tide and the effect of wind, there are moving through the ocean certain well defined streams, following fairly definite courses. These streams of water are known as ocean currents and are interesting from the marine insurance point of view more because of their effect on climate, with its resultant productivity or sterility of life, than for any direct bearing which they have on the perils of the sea. These currents by moderating temperature enable men to produce goods thus increasing the subject matter of insurance. So it is that the British Isles, wherein centers the bulk of marine insurance, owe their very existence as a habitable land to the influence of the Gulf Stream. It is worthy of note in connection with these currents that derelict vessels entering these streams follow their courses for months and years proving a constant source of danger to navigation and probably accounting for the loss of many vessels posted as missing.

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Calms.—The absence of wind or atmospheric movement produces what are known as calms and as already indicated in certain parts of the ocean belts of calm are encountered. To the sailing vessel, this passive force is of the greatest importance. If a vessel unfortunately enters a belt of calm she may be delayed for days and weeks before being able to extricate herself from the toil of this inactive force. Not alone is the danger from delay, but stripped of propelling power it may be impossible to prevent a vessel running ashore through the drifting induced by ocean currents. To the steamer, however, under ordinary circumstances, a period of calm offers no danger and causes no delay and with introduction into sailing vessels of auxiliary motive power calms become of less importance as a marine problem.

Fog.—Often times there is accompanying a period of calm another passive force of nature, called fog. Fog from the viewpoint of marine insurance is one of the most important of natural phenomena. Blotting out of view both near and distant objects the mariner navigates by dead reckoning and the underwriter pays for the resultant losses. Fog like other natural phenomena is intermittent in most places, but in some sections of the ocean is more or less constant. Fog is the condensation of moisture in the atmosphere at or near the surface of the ocean, and being caused primarily by the difference in temperature between the air and the water, fog will be found most prevalent where the climate is moist. Thus conditions tending to produce fog are found around the British Isles where the atmosphere of the naturally cool latitude is tempered by the moist warm air caused by the Gulf Stream. So, off the Newfoundland Banks in the midsummer, the warmer air tempered by the effect of the Labrador Current produces much fog and makes navigation in these naturally treacherous waters doubly difficult. Again off the West Coast of South America the warm air under the equator affected by the cool water from the Japan current and the backing up of wind and moisture by the Andes Mountains produces long periods of fog.

Ice.—Ice is one of the passive forces of nature which is a real menace to navigation. Its effect when held in place is to stop navigation altogether by closing harbors and preventing access to interior ports through the rivers. The real danger, however, arises with the coming of milder weather and the breaking of the

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ice. Then its crushing force is given free play and vessels are strained causing leaks or are sunk as the result of the piercing of their hulls. Icebergs present a more insidious form of the same peril as they are often encountered far from the regions of ice in the well beaten paths of ocean commerce. These huge masses of ice becoming detached by the spring thaws from the parent icefields of the Arctic move slowly with the ocean current until they finally melt in the warmer water of the temperate zone. These ice masses floating six-sevenths submerged and often found in sections where foggy conditions prevail, have caused many of the ocean disasters, notable among which stands the destruction of the S. S. Titanic in April, 1912.

Darkness.—The further north or south of the Equator vessels sail in the fall or winter months the greater the length of the period of darkness. While darkness cannot be called a force of nature, it is so closely analogous to the physical forces under consideration, and it is so important a factor in ocean navigation that reference to it cannot be omitted. In the early days of navigation it was customary for vessels to lay to in the darkness, and only after some elementary knowledge of astronomy was obtained did mariners venture to navigate at night. As already indicated, with the development of stable governments, light houses have been established on dangerous coasts as guides to mariners. Much has been done in this direction, but more remains to be done. In the Baltic Sea and its connecting gulfs, in the North Sea and around the coasts of the Scandinavian Peninsula where there is much trade the factor of darkness from the viewpoint of marine underwriting assumes a prominent place in determining adequate rates. These waters at best afford dangerous navigation, but when it is considered that in the winter months there are but few hours of daylight, the perils to mariners are greatly increased.

Harbors and Their Development.—The question of harbors and harbor development is as important as the consideration of the physical forces. In the selection of harbor sites the physical forces and the natural topography of the ocean bed are two of the determining factors. Winds, waves and ocean currents are of nearly equal importance with shoals, reefs and bars in deciding whether or not a particular site is suitable for harbor development.

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Another factor of vital importance is the relation of the proposed harbor site to the hinterland. If the back country is fertile and access to it physically easy, whether by natural water routes or by the building of railroads, an otherwise unsuitable harbor site may be profitably improved by man. Such harbor development will, however, continue only so long as the artificial improvement is profitable. Thus it happens that several harbors on Long Island Sound which have access to the interior by rivers, were prosperous ports so long as small vessels sufficed for water carriage. With the increase in the size of vessels, the cost of removing bars and keeping channels open was greater than the resultant gain and many ports such as New Haven and New London and Providence fell behind in the race for harbor prestige. Then again the topography of the ocean bed in many parts of the world is constantly, though gradually, changing. Shore lines are being elevated in some sections and depressed in others. The coast of Chili has risen from 20 to 30 feet in the last two hundred years. Part of the Swedish Coast has risen three feet a century while the Netherlands and our own New York and New Jersey Coasts are gradually sinking.[1] When it is considered that in many harbors every foot of depth is vital to the shipping and to the prosperity of the port, the seriousness of this movement will be apparent.

Types of Harbors.—Man naturally has followed the lines of least resistance in the selection of harbor sites and those which he has selected fall into six general classes,[2] viz.:

1. Drowned valley harbors as New York, Norfolk, Puget Sound, San Francisco.
2. Barrier beach harbors as Galveston.
3. River harbors as New Orleans, London and Portland, Oregon.
4. Coral reef harbors as Hamilton, Bermuda and Key West, Florida.
5. Crater harbors as Aden.
6. Artificial harbors as Port of Los Angeles (San Pedro), California and Manchester, England.

Drowned Valley Harbors.—In many places harbors will present a combination of topographical features as in the case of New York where there is a drowned valley through which a

[1] Gregory, Keeler & Bishop, "Physical and Commercial Geography," p. 19.
[2] Gregory, Keeler & Bishop, "Physical and Commercial Geography," p. 23.

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mighty river flows offering easy access to the interior. Natural harbors as those of the drowned valley type are not retarded in their development because of unfortunate natural conditions. San Francisco will always be a leading harbor of our Pacific Coast, regardless of how many times the city may be shaken by earthquake shocks. Nature has here carved out a natural gate of entrance which will always be used even though there is the possibility of heavy toll from earthquake shock. San Francisco not only affords much safe harbor space but access to the interior is rendered easy by the Sacramento River which flows into San Francisco Bay. While it is essential in a harbor that there be sufficient depth to safely float the largest vessels which will use the port, too great depth may render a harbor less desirable as vessels will be unable to find easy anchorage ground. This fault is sometimes found in the drowned valley type of harbor as in the port of Seattle where anchorage buoys are placed to which vessels moor.

Barrier Beach Harbors.—The natural flow of shore currents in time produces barrier beaches which afford protection from the force of the ocean waves and storms. In many sections these beaches are at the edge of a fertile hinterland and where sufficient depth is found in the sheltered water between the barrier beach and the mainland man has built harbors. The most notable example of this harbor type is Galveston, where at the end of a barrier beach close to an ocean inlet a great and thriving port has been established. Fed by a back country exceedingly fertile the development of Galveston has been worth while, and its commercial supremacy has justified the great expense incurred in the building of wharves and in the construction of harbor works and channels.

River Harbors.—The river type of harbor is perhaps the earliest form, as before the days of railroads, when overland commerce was carried on by the slow and laborious process of human or animal carriage, the river offered easy access to the interior. Vessels were of moderate draft, and because of this important cities were located at the head of river navigation, cities which now have given place to the larger ports at or near the river mouth. While as a rule the river harbors themselves have ample depth of water, the silt carried down by the river current produces barriers

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at the river mouth, which in the case of the larger rivers may assume the form of a delta. To keep clear the channel of the harbor site, various devices have been adopted. In the case of New Orleans situated about 100 miles from the Gulf of Mexico, by a system of jetties confining and directing the natural flow of the water, the river itself keeps ship channels clear and deep by forcing the collecting sediment out into the waters of the Gulf. In other river harbors artificial banks have been created to control the river. River harbors as a rule are not located on the deltas as high water and increased currents often shift the course of the stream and may carry the river far away from the established harbor.

Coral Reef Harbors.—Coral reef harbors are comparatively few in number and are of little commercial importance. Located on coral islands they present several forms. The most common are the protecting reef type and the atoll which affords a circular harbor to which entrance is obtained through a narrow passageway. Situated at places where there is no great back country these harbors are of little importance, except where they have been developed into coaling or supply stations on the great highways of trade.

Crater Harbors.—The crater type of harbor has but few examples and is of little importance commercially. Formed by the submerged crater of an old volcano, the prime requisites of easy access to a fertile hinterland are usually missing and the port, unless used as a way station on a trade route, develops little commercial importance.

Artificial Harbors.—Not only has man conquered nature in the improvement of natural harbors but also in the creation of artificial ports. Whether or not an artificial harbor is economically possible depends on the back country. If there is a prosperous interior containing fertile fields and large manufacturing centers, the need for an ocean outlet will arise and man will convert an open roadstead into a sheltered harbor by building a breakwater, or by blasting out or dredging a shallow river channel produce a river port. An example of the first method is seen at the port of Los Angeles (San Pedro), California, where the marvelous development of Los Angeles and of Southern California created the demand for a convenient point of water

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contact with the rest of the world. The great shipping port of Glasgow illustrates the second method where a river but two or three feet deep has developed into a great ocean trade center. The expense of constructing these artificial harbors is necessarily great and their permanence rather uncertain. Situated in naturally unfavorable locations, many artificial harbors after the incurrence of great expense have been rendered useless by the forces of wind and wave.

Open Roadsteads.—Along many coasts there are no natural harbors and the back country is not far enough developed to warrant the construction of artificial harbors. In these localities vessels anchor off shore in fair weather and discharge their cargoes into smaller craft which carry th. to the shore. These open roadsteads offer no protection from storm, and in the event of storm or heavy weather vessels raise anchor and make for the open sea. The hazards in connection with such anchorages are very great, and with the growth of the shore city and the back country breakwaters and moles are built if the coast line and sea bottom will permit and an artificial port arises.

Tidal Harbors.—Many important harbors are so affected by the rise and fall of the tide, that tidal basins are built in which the water is impounded. Vessels enter and leave the basin on high water and the gates are then shut until the next high tide. In other localities it is usual for vessels to take the ground at low tide, floating again on the next flood tide. The growth of a country depends largely on its coast line. If there are natural harbors the back country will develop quickly and the seaboard cities will become rich and prosperous. If on the other hand harbor sites are few, development will be retarded.

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CHAPTER 2

COMMERCIAL GEOGRAPHY IN ITS RELATION TO MARINE INSURANCE. COMMERCIAL DOCUMENTS

The Processes of Trade.—Commercial geography is no less important to the student of marine insurance than is physical geography. While it is necessary for the marine underwriter and the insurance broker to know the physical conditions with which he is confronted, it is also essential that he have some clear idea of the reasons for trade and of the processes thereof. It has been truly said that the successful man must know "everything of something and something of everything." This is especially true of marine underwriting and its kindred branches. Without a reasonable knowledge of banking, foreign exchange and merchandizing, a marine underwriter is not in a position to clearly and logically consider the risks which are offered to him. Some knowledge of the intrinsic qualities of the various commodities offered for insurance, of their mode of packing, of the conditions surrounding their shipment and of the effect of the elements upon them are absolutely essential in order that intelligent consideration may be given to the question of insurance. It is also important that a very definite knowledge be had of the meaning of the various shipping documents and of their purpose in the completion of a commercial transaction.

Commerce is the Exchange of Products.—It is the desire of man to exchange products, that has created commercial activity. That in truth is what commerce is—an exchanging between men and nations of the products which they produce. In his original state, each individual provided for his own needs; he fed himself, he clothed himself, he housed himself. With the progress of time, groups of people perceived that each individual man had a particular gift and that by using this talent, not only for his own needs, but for the needs of others in his group, he was able to produce a better article with a less expenditure of effort. Individuals of a group therefore became specialists

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providing certain necessary commodities for their own use and for the other members of their group and thus the exchange of commodities between men originated. However, the specialization in any one group was restricted by the physical environment in which that group lived. Nature finally sets the bounds of man's development. Rubber cannot be grown commercially in the temperate zone, neither is wheat a successful crop in the tropics. The nature of man is determined to a large extent by climate. The heat and moisture of the tropics induce lethargy, while the cool bracing atmosphere of the temperate zones energizes men and leads them into new and difficult lines of endeavor.

The Demand for Goods.—With progress man has acquired new tastes and new desires. Bound down by natural conditions, he soon learned that the cravings of his nature could be satisfied only by bringing from its natural environment the raw or the finished product which he desired. This necessitated the carriage of commodities between groups and thus commercial interchange developed. The law of supply and demand came into play and commerce increased quickly as new and strange products were brought to the attention of an ever increasing number of people. The early paths of commerce, as has been noted, were overland, or across sheltered water. The demand for the products of the East, which the Crusades had ushered in necessitated some new method of supplying the market. Quicker and safer routes of travel became essential. Two solutions of the problem were possible, namely, first, the building of better vessels, second, the establishment of new trade routes.

The Opening of New Trade Routes.—Both solutions were adopted. The golden age of discovery dawned when men and nations after the decay of the Middle Ages began to take on new life and to read nature's laws. New routes of trade were opened by hardy mariners who built ships staunch enough to withstand the ordinary action of the ocean forces. It is interesting to observe that while civilization originated in the East, it has traveled westward and its development shows a general westward and southward tendency. Colonization followed the opening of new trade routes. The theory of trade, until comparatively recent times, was not well understood. Barter was

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looked upon as a one-sided affair where the stronger or wiser trader reaped an advantage at the expense of his weaker or less skillful fellow. If the more powerful trader could not obtain what he wanted by peaceful means he attempted to take it by force. Trade can only be permanently successful when each trader feels that in the exchange of commodities he has reaped a profit whether it be measured in a symbol of exchange or in an added benefit acquired.

Primitive Barter.—The earliest type of trade of which record exists is what is known as silent or dumb barter, a method which still persists among some uncivilized tribes. Trade of this character is made because of lack of trust between the bargainers. Herodotus describes this method of trade as practised by the Carthaginians in their dealings with the African natives. Approaching a trading port the Carthaginians would go ashore with their goods, build fires to attract the attention of the natives and then return to their ship. The natives would approach and inspect the proffered merchandise, place beside it native products which they considered sufficient payment, and retire. The traders would again go ashore, examine the native goods and if in their opinion sufficient in quantity and value, would take them back to their ship and depart. If not, they returned to their ship empty handed to await further overtures from the natives. This process was continued until the traders were satisfied with the native offer. It is difficult to explain why the natives did not steal the merchandise of the traders and make away with it. Doubtless, however, these early traders had methods of inducing fear which spoke louder than words, and made this method of exchange at once both practical and successful. History recounts that the Carthaginians pursued these peaceful methods of trade only when forceful measures were not apt to succeed.

Types of Trade.—In the development of trade two general types appear. These are known as the Mediterranean and the Oceanic types. The former is represented by the early Mediterranean and Baltic Sea commerce, the latter by the oversea routes to the Orient. In marine insurance by custom a similar classification is made into coastwise and ocean trade. The Oceanic type is of course the outgrowth and development of that used in the Mediterranean, but each class of trade has exerted and still

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exerts its influence on commercial development. Indeed the two types merge into one another and with their overland connections cover the whole earth with a network of routes over which the nations exchange their products.

The Use of Symbols and the Bill of Exchange.—The method of exchanging goods has improved with the passing of time. No longer do individuals, except in rural districts, exchange goods for goods. Early in civilization it was found desirable to have symbols of value which were given in exchange for commodities. The Indian used wampum, other nations used salt, arrow heads or gold dust. Later actual money or gold or silver or the baser metals came into use, and among the more civilized peoples actual barter fell into disuse. With the growth of trade, however, it was found that there was not enough of the precious metals to serve the needs of trade, and its transfer from one individual or one country to another was attended with great hazard. Accordingly man sought and found a new method of payment by credits. The Jews in the twelfth century devised the bill of exchange or draft, which altered the whole method of conducting commerce and made possible the tremendous growth of international trade.

Marine Insurance Essential to Overseas Trade.—It is at this point that marine insurance fits into modern commercial life. Historically it has been noted already that marine insurance in its present form originated at about the same time as the bill of exchange. This seems a logical order of progress. The bill of exchange when issued in conection with a shipment of goods, on the security of such goods, would become a mere unsecured debt in the event of the goods being lost or destroyed. Some additional guarantee was necessary in order to make the bill of exchange a safe substitute for actual money. This security was and is provided by the policy or certificate of marine insurance. Therefore a knowledge of the method of financing commercial transactions becomes an essential part of the education of the student of marine insurance.

Commercial Documents.—In the ordinary commercial transaction there are four documents which collectively are known as a commercial set. These documents represent and take the place of the goods themselves in the financing of the transaction,

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and pass current in all the markets of the world. These four documents are:

1. The invoice which is the merchant's bill for the goods.
2. The bill of lading which is the carrier's receipt for the goods.
3. The draft or bill of exchange which is the merchant's payment.
4. The insurance certificate which is the document of guarantee.

An insight into each of these documents and its relation to the completion of a commercial venture is essential before any clear understanding may be had of international trade and finance.

The Invoice.—First there is the invoice or bill of goods. A merchant in making a sale of goods, negotiates with the buyer as to price, discounts and terms of sale. Having agreed one with another the contract of sale is made and the invoice sets forth in writing the terms and conditions of the transaction. The commodities sold are listed one by one, the quantity shown and the price per unit indicated. Goods are marked and numbered, that is each package is stamped with an identifying symbol and if there is more than one package with the same mark, consecutive numbers follow the mark on each package. These marks and numbers appear on the invoice. In addition there may be charges for packing, cartage and consular fees. Whether or not charges for insurance and freight will appear on the invoice depends on the terms of sale. Three general forms of sale are common in commercial transactions, viz.: cost (C), cost and freight (C&F) and cost, insurance and freight (C.I.F.).

Cost Sales. F.O.B. and F.A.S.—Cost sales require the seller to provide the goods packed and ready for shipment. The seller may agree to act as agent for the buyer in effecting insurance and in engaging freight space, but these duties are usually performed by a freight broker to whom the goods are delivered by the seller, or subject to whose order the seller holds the goods. In any event no charge appears on the invoice for freight or insurance. In other words when the merchant ships the goods or delivers them to the buyer's agent he is out of the transaction except with respect to the payment of the invoice. It sometimes happens that in a cost sale the amount of freight may appear on

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the invoice, but such entry is merely a notice of the amount of freight that is or will be due the vessel and is not included in the total amount of the bill. The contract of sale may require that the seller of the goods deliver the property at a certain place short of destination where the buyer will take title. In such event notation is made on the invoice of such terms of sales as F.O.B. cars Chicago or F.A.S. steamer at New York. The letters F.O.B. are a commercial abbreviation for "free on board." A merchant buying goods in various Western cities may arrange for carload lot shipments from Chicago and accordingly agrees with each seller that the latter will deliver and be responsible for the property until delivered on board the cars at Chicago. On the other hand a foreign buyer may wish to have no responsibility until the goods are at the shipside of the steamer which is to carry them to destination, and he accordingly requires the seller to deliver the goods F.A.S. steamer New York. F.A.S stands for the words "Free along side," the seller assuming all charges and risk from the original point of shipment until delivered at the side of the steamer ready for loading.

Cost and Freight Sales (C&F).—A cost and freight sale (C&F) is one in which the seller bills the goods at a price which includes the cost of the goods, the incidental packing and other charges and the cost of delivering the property at the ultimate destination. No responsibility is assumed for safe delivery at destination, the duty of providing insurance resting on the buyer. If the freight is payable at destination, the amount which will then be due is included in the invoice with the other charges, but this amount of freight is deducted at the foot, credit thus being given the seller so that he may assume this charge when delivery is made. If the goods are not delivered in specie the freight will not be due. It will be noted that under a cost and freight sale the seller assumes the responsibility of providing freight room for the goods, a matter not altogether easy in time of shortage of tonnage.

Cost, Insurance and Freight Sales (C.I.F.).—Under a C.I.F. Sale (cost, insurance and freight) the seller practically agrees to guarantee delivery of the property purchased by the buyer. He agrees to set the goods down at the buyer's warehouse free of all charges. Deduction may be made of the amount of collecti-

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ble freight as in the cost and freight sale and it may be that the buyer will assume responsibility for the payment of duties and other local charges accruing at destination. Whether or not these special charges will be assumed should either be clearly set forth in the contract of sale and noted in brief on the invoice, or be so well established by custom and usage as not to require special mention. Custom and usage play an exceedingly important part in the conduct of commercial transactions, and in the absence of evidence to the contrary it will be presumed that a transaction is to be completed in accordance with the customs and usages in vogue with respect to similar transactions. Under C. I. F. terms the seller is not only obligated to provide freight space, but must protect the goods by insurance, obtaining coverage in the usual form provided for the insurance of such goods with respect to particular average (partial loss), war risk and geographical limits. If the seller has quoted a lump sum price on the C.I.F. basis he will be liable for fluctuations in the freight and insurance markets. This being so, it is quite common when unusual conditions prevail, as in war times, to merely fix a price for the goods themselves in the contract of sale, to which shall be added on the invoice the cost of insurance, freight and other charges at the rates prevailing at the date of shipment.

Invoice Determines Relation of Buyer and Seller.—The foregoing explanation of "terms of sale," and there are many modifications of the three forms mentioned, will indicate the importance of the invoice in settling the relations of the parties to a commercial transaction. Its importance from the viewpoint of insurance will be evident, when it is considered that in a cost and freight sale "F.A.S. Ship" or "F.O.B. Ship" the seller provides insurance until the goods are alongside ship in the first instance or until on board ship under the second illustration, while the buyer must provide protection from that time on. In the event of loss occurring at the port of loading the invoice will determine at whose risk the property was and upon which set of underwriters, those of the buyer or the seller, the burden of responding for the loss will fall. A consular invoice accompanying the shipping documents, may be required in the shipment of goods between foreign nations. In such case the seller having made out his invoice presents the same to the consul of the country to

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which the goods are consigned, or through which they may pass, or to both. Each certifies that the invoice is proper, and signs and attaches the seal of his office to the document. This visé by the consul indicates that the shipment has been made in proper form, that the price for customs purposes is fair and that the rules and regulations respecting such shipments have been complied with. In any disturbed state of the world's commerce this visé of the consul is of the greatest importance. When war conditions exist various forms of export and import licenses may have to be obtained and other unusual requirements complied with before shipment may be made.

The Charter Party.—Before proceeding to the consideration of the second document in the commercial set, the bill of lading, it will be necessary to gain some idea of an agreement which in many cases, underlies the bill of lading. This is the charter party, a document embodying the terms of a contract for the hire of the whole or a part of a vessel. The charter party and the bill of lading while both relating to the ship itself may be differentiated by describing the charter party as a contract for the hire of the vessel as a carrying medium, whereas the bill of lading is a contract of transportation. Owners of vessels may be divided into three classes, first, those who have vessels specially designed and constructed for the carriage of their own property, such as the oil tank lines; second, companies organized for the transportation as common carriers of goods over certain definite routes and owning vessels known as "liners;" third, individuals or companies who enter the ship business as owners but not with any definite employment for the vessels which they own. Their vessels are for hire and will enter any trade for which they are adapted as the commercial demand requires. These vessels are known as "tramps" and the document setting forth the contract by which the vessel is rented is the "charter party." Two general forms of charter party exist, but there are many modifications of these general forms. Under the first and more common form, the vessel owner hires his vessel to the charterer for a definite period or for a described voyage at a determined rate of compensation, the charterer to have the entire use of the vessel, but the owner to operate and be responsible for the conduct of it. Under the second general form of charter, the owner transfers

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his vessel as a bare ship, that is without captain, crew, fuel or provisions, to the charterer upon whom falls the entire burden of the operation of the vessel and the entire responsibility for the preservation and safety of it. By a "bare boat" charter as it is known, the owner transfers to the charterer everything but the legal title to the vessel.

Forms of Charters.—As a general rule vessels are chartered for one of two purposes. The charterer may be engaged in some specific line of trade where vessel space in large quantities is needed as in the shipment of bulk cargoes such as grain, coal or of baled or bagged goods such as cotton, coffee or sugar. For these cargoes the merchant could not rely on obtaining sufficient space on liners and so through vessel brokers who are in touch with the freight markets of the world he will engage one or more entire ships either on a basis of payment of so much a day, so much a voyage, or so much a unit of cargo carried. Such charters are made in various forms, each particular trade having a special form, some associations of merchants engaged in the same trade having standard forms for the chartering of vessels for their particular trade. The second general reason for chartering a vessel, will be the necessity of a line operating vessels over definite routes requiring additional tonnage. In many cases where a line charters a ship, especially if it be a long time charter, the vessel will be taken over on the bare boat form. During the world war much of the chartering done by the governments was on the bare boat form.

The Bill of Lading.—This naturally leads to a consideration of the bill of lading. If the vessel owner or the charterer "puts his vessel on the berth" as it is known, to load cargo for whomsoever may offer it for transportation, he must receipt for the goods which he accepts for carriage setting forth in this document the rate of freight and the terms and conditions under which the property will be carried. This receipt is called the bill of lading, which in its many forms is basically a document older by far than the marine insurance policy and is said to have changed little in 2000 years. It contains a mass of terms and conditions usually printed in such small type as to make the reading of it a difficult operation. These clauses are the result of years of legal adjudication and have been added to from time to time

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usually in an effort to lessen the liability of the ship owner or charterer. It may be said as a general proposition that the ordinary bill of lading is so worded as to relieve carriers from all obligations except those which the law insists that they shall retain. As decisions have been rendered holding carriers liable for this or that risk to which the goods may be subject, the carriers have so far as law permitted inserted new words adding such risk to the list of exceptions contained in the bill of lading. In most countries water carriers have been relieved by statute of many of their common law obligations, whereas land carriers are as a rule still held to a high degree of responsibility for property in their custody.

Bill of Lading a Contract of Carriage.—The bill of lading is the contract of carriage, wherein the master of the vessel or the owner or agent, not only receipts for the goods, but also agrees to carry them to the port or place named and deliver them in the same condition unless prevented by one or more of the long list of excepted causes. In the bill of lading are noted the marks and numbers of the packages received, they being receipted for in "apparent" good order. If, however, any unusual condition of the package be observed, as moisture or breakage, a note is made of this to prevent claim being made on the vessel at destination for the improper condition of the package. The document also calls for delivery to some named individual or firm or the goods may be consigned simply "to order" notify ———— ————. The bill of lading thus takes on the character of a quasi-negotiable instrument and by endorsement passes title to the property which it represents. This negotiability is necessary, of course, if the commercial set is to serve its purpose in trade.

Liability of Carrier Determined by Bill of Lading.—The bill of lading serves a further purpose in that it determines the respective responsibilities of the carrier and the shipper and consignee, enabling the owner of the goods to arrange insurance against the risks excepted in the bill of lading, in so far as underwriters will assume liability therefor. In early forms of "ladings" carriers assumed responsibility for practically everything except the Acts of God, the Kings' Enemies and Perils of the Sea. Underwriters generally accepted these risks so that the owner of the goods could fully protect himself against all liabilities

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other than the minor damages excepted in insurance policies. With the adding of exceptions in the bill of lading and with the unwillingness of underwriters to assume responsibility for all the excepted risks, it is not always possible at the present time for a merchant to relieve himself of all risks to which the goods may be subject during transportation.

The Manifest.—In connection with the bill of lading may be mentioned the manifest which is a ship's document giving in brief a list and description of all the property for which the vessel has issued bills of lading, showing shippers or consignees' names or initials, marks and numbers, and other descriptive information. This document is of great value in determining whether or not packages of goods are actually on board a vessel when the bill of lading is not available. Bills of ladings are usually issued in original, duplicate and triplicate and several non-negotiable copies may be issued if required. Additional copies of the manifest are also made, so that in the event of disaster, particulars of the vessel's cargo may be quickly obtained. A copy of the manifest is also lodged in the custom house, and another copy is on board the vessel to present to the custom or port authorities at the port of destination.

The Marine Insurance Policy or Certificate.—The marine insurance policy is the document which makes possible commercial transactions on a basis of credit rather than by the actual exchange of goods or money. Marine insurance may be arranged specially for each individual transaction, but it is more usual for merchants to negotiate in advance with underwriters for a contract which will protect all their shipments made within a specified time or over definitely described commercial routes. These contracts are known as open policies, and the assured is usually given the privilege of issuing under such policies, on specially prepared forms embodying the salient conditions of the insurance policy, certificates of insurance. These documents certify that there has been insured with the named insurance company in the name of the assured, so many packages of goods marked and numbered as indicated in the margin for a specified amount of money, by named or described conveyances from the point of shipment to the point of destination, against the perils enumerated therein or in the parent policy to which reference

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No. c 729 **CERTIFICATE OF THE** $ 25000.00

New York Marine Insurance Company

OF NEW YORK

THE REVENUE LAWS OF GREAT BRITAIN REQUIRE THAT THIS CERTIFICATE BE STAMPED WITHIN TEN DAYS AFTER RECEIPT IN THE UNITED KINGDOM, OTHERWISE LOSS CANNOT BE COLLECTED THERE. SUCH STAMPS TO BE AT THE EXPENSE OF THE ASSURED.

New York, FEBRUARY 15th 1919.

This is to Certify, That on the 28th day of JANUARY 1919 there was insured with this Company under Policy No. 72312 for Cox & Co., (Abilene), Tex. TWENTY-FIVE THOUSAND 00/100 Dollars on 100 bales of Cotton valued at sum insured, per TEXAS & PACIFIC RAILWAY at and from ABILENE, TEX. to NEW ORLEANS AND AT AND THENCE TO LIVERPOOL, ENG.

This certificate represents and takes the place of the Policy, and conveys all the rights of the Original Policy-holder (for the purpose of collecting any loss or claims), as fully as if the property were covered by a Special Policy direct to the holder of this Certificate, and free from any liability for unpaid premiums.

Loss, if any, payable to Cox & Co.

or order, at the office of Banks & Co., London, England, upon the surrender to them of this Certificate, computed at the current rate of exchange on the day of payment and when so paid liability under this insurance is discharged.

CLAUSES

To pay particular average on each ten bales as if separately insured, if amounting to three per cent., unless otherwise agreed, and on shipments to Europe to pay sea damage pickings claims without reference to series or amount. General Average and Salvage Charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

Including the risk of country damage on shipments insured hereunder to Europe, Japan, China, India, or Manila, subject to settlement at destination named in the certificate or declaration, in accordance with customs and usages at the port of destination unless otherwise specified in certificate with the consent of this company but no claim for loss of, or damage to, cotton picked or reconditioned in the United States, nor for any cost or expense in respect of such picking or reconditioning shall be recoverable hereunder. Country damage is not covered on "cost and freight" shipments nor local sales, nor on shipments to points in the United States or Canada, nor to ports in Mexico, South or Central America or Russia.

Warranted by the assured free from loss or expense arising from capture, seizure, arrest, restraint, detention, or destruction, and the consequences thereof, or of any attempt thereat and also from all consequences of insurrections, hostilities or warlike operations, whether before or after declaration of war; and whether lawful or unlawful and whether by the act of any belligerent nations, or by governments of seceding or revolting states, or by unauthorized or lawless persons therein, or otherwise; and whether occurring in a port of distress or otherwise. Also warranted not to abandon in case of blockade, and free from any expense in consequence thereof, but in the event of blockade to be at liberty to proceed to any open port and there end the voyage. It is also agreed that the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention for, or on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation. Also warranted free of loss or damage caused by strikers, locked out workmen or persons taking part in labor disturbances or riots or civil commotions.

Held covered, at a premium to be arranged, in case of deviation or change of voyage within the limits of this policy, or transfer to other approved steamers, provided notice be given to the assurers as soon as known to the assured.

Warranted by the assured that they will not relieve any carrier or other bailee from any statutory or common law liability or duty.

Warranted not to cover the interest of any partnership, corporation, association, or person, insurance for whose account would be contrary to the Trading with the Enemy Acts or other statutes or prohibitions of the United States and/or British Governments.

In the event of loss or damage to the property insured hereunder, proofs of loss will be authenticated on application to one of the Company's representatives as named on the back of this certificate.

All insurances which by endorsement hereon in accordance with the terms and conditions of this policy include risk after discharge at foreign port of destination and until delivered to warehouse or railway car or mill by railway or other land conveyances contemplate through transit with customary despatch.

In case delivery to warehouse or mill is stopped or delayed by order of the assured, or the agent of the assured, the risk hereunder shall thereupon terminate.

Marks and Numbers

TSR 100

Not valid unless countersigned by Cox & Co.

Countersigned

Cox & Co.

Henry Clay Smith, President.

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is made. The important point, however, in the present connection is that the certificate goes on to state that loss, if any, is payable to X.Y.Z. or order at a named place and if a certificate is payable abroad at a fixed or determinable rate of exchange. This document, like the bill of lading, thus becomes a quasi-negotiable instrument and becomes available to the holder thereof to whom it has been transferred in good faith. The holder of the certificate, however, takes the document subject to any liability there may be on the part of the original assured for unpaid premiums, unless indeed by special clause in the certificate the underwriter waives his claim for premium against third parties. These certificates of insurance provide for payment in all parts of the commercial world and when issued by responsible underwriters are accepted at their face value in all the banking centers of the world.

The Symbols of Ownership.—The merchant who has made a shipment of goods has at this point three documents. First an invoice showing the purchase price of the goods sold. Second a bill of lading indicating that the goods described in the invoice have been shipped and are in the possession of a common carrier on their way to the buyer. Third, an insurance certificate certifying that these goods are insured as specified against the perils of transportation. He thus has parted with his property and has in place thereof certain documents which will entitle him or the legal holder thereof to the property at destination or in the event of its damage or loss to recompense by insurance. This, however, from the merchant's point of view is but one of many transactions of a similar nature in which he is involved, and he is primarily interested in receiving payment for the goods sold and getting out of the transaction.

The Draft or Bill of Exchange.—When making a contract of sale arrangements are made between buyer and seller regarding the method and terms of payment. In overseas trade this is usually arranged by draft payable on sight or a definite number of days, 30, 60 or 90, as the case may be, after sight or presentation of the draft, accompanied by invoice, bill of lading and insurance certificate. The seller of the goods has banking connections who have agreed to buy his drafts or to accept them for collection. The merchant accordingly having made his invoice, obtained the

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bill of lading and insurance certificate, draws a draft on the purchaser in the following form:

FIRST

No. 1128

£5000. Abilene, Tex. Feb. 15, 1919.

Thirty days after sight of this First of Exchange (Second Unpaid) Pay to the order of COX & CO. Five Thousand Pounds Sterling, value received and charge same to account of

(100 Bales Cotton T S R).

COX & CO.

To—JAMES TURNBULL & CO.
London, England.

Endorsing the draft in blank and attaching it to the other three documents, the bill of lading and insurance certificate having been endorsed in blank, he presents the commercial set to his bankers who put the draft in process of collection, and set up as a credit to the seller the whole or a part of the amount for which the draft is drawn. The merchant is now in funds and is practically out of the transaction.

Method of Collection of Draft.—The process of the collection of this draft which we will assume represents payment for a shipment of 100 bales of cotton marked T S R by Cox & Co. Abilene, Tex., to James Turnbull & Co., London, England, will serve to illustrate how an overseas shipment is made and financed and the important part marine insurance plays in these transactions. The Farmers & Merchants Bank at Fort Worth with whom Cox & Co. do their banking and which has accepted the draft for the 100 bales of cotton is merely a so-called country bank and does its banking with a larger bank at New Orleans to which it passes on this commercial paper, and in turn receives credit for the amount advanced. The New Orleans Bank is a correspondent of a New York Bank to which it sends this commercial paper for collection and receives credit therefor at the New York Bank. In London the New York Bank has a correspondent to which it sends the documents and this bank sends its representative to James Turnbull & Co. with the documents. They carefully examine them to see that the shipment against which the draft is drawn corresponds with the contract of sale into which they

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have entered with Cox & Co., and if it does they write across the face of the draft,

Accepted Mar. 15, 1919.
Payable at Security Bank.

and sign their name. The documents which are the symbols of the goods are retained by the bank which presented the draft for acceptance. Assuming that the bill is payable 30 days after sight, this means that 30 days from Mar. 15, 1919 or on April 17, 1919, three days of grace usually being granted, the holding bank will present the draft at the Security Bank for payment and James Turnbull & Co.'s account will be charged with the amount and the bill of lading, insurance certificate and invoice will be delivered over to them. If James Turnbull & Co. so desire they may discount the bill when presented for acceptance or at any time prior to the due date. If the 100 bales of cotton arrive prior to the due date they will probably wish to discount the bill in order to obtain the documents and so obtain delivery of the goods upon the surrender of the bill of lading. The draft having been actually paid by James Turnbull & Co. the transaction is completed and the credits, set up in the various banks through which the documents have passed, are confirmed. If James Turnbull & Co.'s credit is high the shipping documents may be surrendered to them when they accept the draft.

Trading in Bills of Exchange.—It may be that Cox & Co., instead of depositing their documents with their local bankers at Abilene will send them on to New York City to some bill broker. These bill brokers deal in commercial paper, just as stock brokers deal in stocks and bonds. If Cox & Co.'s financial and moral reputation is high this bill broker will buy their commercial paper at the prevailing rate for exchange on London and they will receive credit in full for the amount of the draft and will be absolutely out of the transaction, except under their liability as the drawer and/or endorser of the bill in the event of its non-acceptance by the drawee. The bill broker in turn sells this exchange to a bank which sends the draft on to London for collection, where the process of acceptance and payment is conducted as outlined above. Bankers in buying commercial paper carefully examine the documents, paying especial attention to the insurance certi-

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ficate to see that it is in proper form and that the company or underwriter with whom the insurance is placed is one whose security can be accepted safely.

Letters of Credit.—The foregoing description of the use of the commercial set is merely an outline and does not attempt to go into the details of these transactions. A similar process is involved when shipments are made under letters of credit. In such cases the buyer purchases a letter of credit from his bank, by virtue of which there is established in some foreign banking center a fund to the credit of the buyer, against which he may authorize the seller to draw drafts for goods purchased by the buyer. The seller draws the draft, attaches the invoice and bill of lading thereto and presents it to the firm or bank in whose favor the letter of credit is issued. They accept and pay the draft charging the amount so paid against the letter of credit. In such cases, it is usual for the buyer to have an open policy of insurance payable to the bank issuing the letter of credit, which covers all shipments made under such credit, so that no insurance certificate is attached to the commercial set. The invoice, however, indicates that the terms of sale provide for buyer's insurance and the sale is one made on cost or cost and freight terms already described.

The Balance of Trade.—These transactions in their various forms establish the basis of international trade and credit. Countless in number it will readily be seen that there are always in the banking centers of the world large amounts of commercial paper drawn on foreign citizens which eventually must be paid. The large banks in the great commercial centers of the world run debit and credit accounts with each other, a New York bank crediting itself with commercial paper which it sends to its London correspondent for collection and debiting itself with paper drawn on American firms sent to it by its London correspondent for collection. This process of debiting and crediting will continue on each side until the balance of trade becomes so much in favor of one country that there are not sufficient credits held by all bankers in that country, to offset the debits against the bankers in another country. To again establish the financial equilibrium it is necessary for the debtor nation to ship gold to the creditor nation and so again restore the balance of trade.

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Here again marine insurance is called into aid, for without insurance the gold will not be shipped.

Goods the Basis of Exchange.—It must not be supposed from this general description of the process of financing overseas shipments, that all drafts are accompanied by shipping documents. It is maintained, however, that underlying the major portion of bills of exchange there is the buying and selling of goods and it is because of the existence of the goods and of the negotiable documents which represent the goods that the transference of credits by the bill of exchange or draft is possible. Banking, transportation and insurance are a trinity so closely interwoven one with the other that neither is of much use dissociated from the other two.

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CHAPTER 3

SHIPS AND SHIPBUILDING

A Vessel the Basis of all Marine Insurance.—Every marine insurance transaction involves some type of vessel. Whether the insurance be on hull, freight or cargo, there is a vessel as the base of the insurance, and whether the risk is a good one or a bad one from the underwriting point of view depends largely on the character and condition of the vessel. Marine insurance is general in its application. From the slow man-propelled canoe of the Indian on the upper reaches of the Amazon River, up through all the intermediate stages to the colossal ocean grey hound driven through the waves at a tremendous rate of speed by the propelling power of the latest type of turbine engine, marine insurance plays its part in assuming the hazards of navigation and in distributing losses over the whole consuming public. It therefore becomes essential before attempting any general discussion of the principles of marine insurance to obtain some general idea of vessels, their types, their structural qualities with respect to the natural forces with which they must contend and of their suitability as carriers of the many and varied commodities with which transportation has to deal.

Mediums Used in Construction of Vessels.—Perhaps the best avenue of approach to this subject is to consider first the mediums which are used in the construction of vessels. These are in general four in number, *i.e.*, (1) wood; (2) wood and metal known as composite vessels; (3) metal and (4) the new and experimental medium of reinforced concrete. Vessels may again be considered from the viewpoint of their propelling power. First, of course, we find the man-propelled vessel, now fast disappearing except among the most primitive tribes; second, vessels propelled by the wind; third, those whose motive power is purely mechanical; fourth, vessels propelled by a combination of wind and mechanical power which are known as auxiliary vessels, and, fifth, vessels without motive power such as harbor barges.

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Wooden Ships. Difficulties in Construction.—Wood was the original material from which large sailing vessels were built. This type of ship may, roughly, be divided into two classes, the square rigged and the schooner or fore-and-aft rigged types. Among the square-rigged vessels are found barks, barkentines, brigs and full-rigged ships, each named from its special type of masts and sails, and each possessing its peculiar advantages in connection with certain routes of trade. The square-rigged vessel has, to a considerable degree, given way to the simpler form of fore-and-aft rigged schooner. In this latter type it is less difficult to manipulate the sails. Mechanical power is frequently used in raising and lowering the sails of the schooner rigged vessels, thus materially reducing the cost of operation. The schooner type may again be subdivided into classes according to the number of masts with which the vessel is equipped, the rigging of the vessel being determined to a large extent by the trade for which it is designed. In connection with the construction of wooden vessels, whether for sail or steam power, it should be borne in mind that beyond a certain length, say 200 feet, it becomes increasingly difficult to so fasten the parts of a vessel together that it will be able to withstand the severe strains to which it will be subjected when exposed to ocean storms. Furthermore the increase in the number of masts, with the consequent added sail area, or the enlargement of the propelling machinery used to develop high speed, subject the vessel to unusual stresses. These stresses have so strained vessels in many cases that seams have opened up permitting water to enter and damage cargo and frequently have caused the whole hull structure to be thrown out of alignment. This is particularly the case when vessels constructed for a certain trade are transferred to more difficult routes for which they are not designed.

Green Wood and Its Effect.—Another very serious difficulty encountered at the present time in the construction of wooden vessels is that of green wood. The unusual demand for tonnage has exhausted the supply of seasoned wood for shipbuilding purposes and trees are being felled, sawed into shape and built into the structure of the vessel without being properly cured. This wood being green will gradually dry out, shrink and open up the seams of the vessel. In the case of engine driven wooden

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vessels this gradual shrinkage may so weaken the vessel that the machinery will be thrown out of alignment, causing serious engine trouble. Then again before the war wooden shipbuilding had become more or less of a lost art and there were comparatively few skilled wooden ship carpenters. The combination of these physical and human difficulties has resulted in a number of wooden vessels encountering serious difficulties soon after they were put into service.

The Fastenings of Wooden Vessels.—Not the least of the problems the wooden ship builder has to meet is that of fastening the various component parts of the vessel into one harmonious whole. As already suggested this problem becomes more difficult as the length of the vessel is increased and the sail or engine equipment enlarged. The amount of wind pressure exerted against the sails of a five- or six-masted vessel is enormous even in moderate weather, and when atmospheric conditions produce storms, unless such vessels have sufficient metal and wooden fastenings (treenails) something will give under the strain with consequent loss of life and property. Not a few of the wooden vessels launched within recent months have after their first trip been returned to the shipyards for the insertion of additional material and the refastening of the whole structure. When it is remembered that every additional ton in the weight of the vessel itself reduces its carrying capacity one ton with a consequent loss of earning power, a motive will be seen for light construction.

Composite Ships.—During the decline of the wooden vessel in the second half of the nineteenth century and before the metal ship had come into its own, there were produced composite ships built partly of wood and partly of metal. In these vessels the usual construction called for a metal frame work and deck beams with wooden sheathing and decks. Vessels of this type of construction are not built commercially at the present time, although the United States Government included a few steamers of this type in its shipbuilding program. A few of the old composite ships are still operated on the Great Lakes and here and there vessels of this type will still be found in active service.

Steel Vessels.—Steel has taken the leading place among shipbuilding materials. When metal ships were first introduced

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iron was used almost exclusively. With the development of the iron industry and the production of new forms of the metal it was found that steel lent itself more readily to the construction of the hull itself and contained qualities which offered better resistance and accommodation to the various stresses and strains to which the structure was subjected when the vessel was in operation. Iron, however, offers more resistance to the corrosive action of sea water and some of the old iron sailing ships built thirty or forty years ago are still in service, their hulls tight and sound after their long and arduous careers. England was the pioneer nation in the development of the steel vessel and it is to this fact that her leadership in the overseas carrying trade may, in no small measure, be attributed.

The Marine Engine.—The construction of the metal vessels naturally led to the development of the marine engine. Steamers have been in operation for many years, the side or stern paddle wheel type of engine first being used. This system of propulsion was not well adapted to the severe storms encountered on the oceans, and the screw propeller came into use. Since the adoption of this method of applying the power generated by the engines, the development of the steamer has been rather one of form than of method. How great this progress has been, will appear from a comparison of the first Cunard Liner with the modern ocean greyhound.

Liners and Tramps.—Experience quickly revealed defects both in hull and engine construction and the story of steel shipbuilding is one of constant improvement. Various types of construction have been devised to meet the needs of the varying conditions found in the different commercial trades, but in a very general way steel steam vessels may be grouped under two heads, the liner and the tramp. The liner is designed for speed primarily, the tramp for utility. The modern leviathan would be a commercial failure were the traveling public not willing to pay large amounts of passage money for the extra speed, comfort and luxury which these steamers afford. So much room is occupied by passenger, engine and bunker accommodation that little cargo space remains. In the modern tramp steamer on the other hand, cargo space is the primary object and speed becomes a secondary consideration. In the building of the tramp steamer,

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and it is with this type that marine insurance in chiefly concerned, the endeavor is to produce as large a vessel as is practicable, considering the routes of trade for which it is designed, the size of the harbors which will be used and the possibility of obtaining cargoes sufficiently large to occupy the cargo space provided. It is considerably cheaper to build one large tramp steamer than it would be to build four small ones of equal aggregate carrying capacity. It is also much cheaper from the viewpoints of both fuel and crew to operate the large vessel than it would be to operate the four small ones. However, if the large vessel cannot obtain full cargoes or if her size restricts her use to a few harbors or to a few trades which are relatively unprofitable, the vessel will be a commercial failure. It will be demonstrated later on that every additional ton of weight in the structure of the vessel itself reduces the weight of the cargo to be carried by one ton. Hence, the principal consideration in the building of the tramp or cargo steamer is the reduction of the vessel weight to the point where all the requirements of safety have been met, but where all unnecessary parts have been eliminated. The endeavor is also made to so design the shape of the vessel that the maximum of cargo space is provided with the minimum retardation of speed.

Longitudinal Framing.—Perhaps the greatest advance in this direction in recent years has been the invention of a practical system of longitudinal framing. This system, known as the "Isherwood System" after the name of the inventor, reduces the weight of the material in the ship itself without any loss of strength and at the same time increases the cargo space. Under the older system of transverse framing, the frames were placed so close together that it was impossible to stow the ordinary cargo in between them. In the longitudinal system, the transverse framing is replaced by great transverse bands which undergird the body of the vessel, placed at intervals of twelve to twenty feet. In them are notches in which are set longitudinal frames to which the steel plating is riveted. In between these frames cargo can be placed against the side of the ship or against the cargo battens, thus greatly increasing the capacity for a light cargo such as cotton. For heavy dense cargoes the capacity is also increased as the weight of the vessel itself is reduced. This design of construction has lent itself successfully to all types of

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shipbuilding, both sail and steam and is used, not only in the building of bulk carriers but also in the construction of liners.

Bulk Cargo Carriers.—The carrying of bulk cargoes presents various difficulties and special types of vessels have been devised to meet the peculiar conditions created by the overseas trade in such commodities. The tendency of grain and coal cargoes to shift and to render a steamer unstable has led to the production of so-called self-trimming steamers, a type of which is seen in the topside tank bulk carriers. The carrying of petroleum in bulk has produced problems which are successfully met in the modern tank steamer. On the other hand the use of crude oil as a fuel has created new problems especially from the underwriting point of view. Fuel oil is ordinarily carried in the ballast tanks or the double bottom of a steamer. If the vessel grounds and injures her bottom so that repairs must be made, the fuel oil is necessarily drawn out. Before mechanics can safely enter the tanks, however, they must be thoroughly cleansed and a chemical test made for poisonous gas. This process is one entailing great expense and only recently has been brought to the attention of hull underwriters.

The Self-trimming Vessel.—New types of ships are produced in an endeavor to meet special needs. Within the last two years a self-trimming ship, equipped with small unloading elevators has made its appearance. This is an entirely new type of vessel designed to afford quick despatch in the unloading of bulk cargoes of grain, ore, or coal. Self trimming in design, there is laid at the bottom of the ship in long chambers running the length of the vessel, a miniature railway on which run small cars. These are loaded through chutes at the bottom of the holds, and are drawn to the elevator wells. They are then lifted up above the deck and their contents dumped through discharge pipes into receiving barges or onto the discharging dock. This type of vessel was designed by the Italians and the first vessel produced, the Str. "Milazzo" had a short but eventful career. Loaded with a general cargo, the vessel took fire in her cotton cargo, the fire spreading to barrels of oil in the bottom of the hold. The burning oil, floating on the water which was poured into the hold to extinguish the fire, found its way along the railway trunk to the openings into adjoining holds, thus communicat-

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ing the fire to the rest of the ship. The fire was extinguished but not until great damage was done and after temporary repairs at the Azores, the ship reached her Italian port of destination, where permanent repairs were made. But ill-luck pursued her for soon after reëntering commercial service she was sunk by a submarine. The case of the Milazzo is especially interesting from the point of view of marine insurance in that it indicates how new types of vessels produce new problems and create unsuspected hazards for the underwriter.

Concrete Ships.—Doubtless the most interesting experiment of the present time in the realm of shipbuilding is the concrete ship. Successfully used in all forms of construction, reinforced concrete is now being experimented with as a medium for producing ocean going mechanically propelled vessels. Its sponsors claim for it all the virtues of other construction materials, and in addition point out the ease, speed and economy of building. Being a new form of construction it will have to live down the natural prejudice against stone vessels, even as the ship built of metal, which it was said would not float, had to overcome the prejudice of seventy-five years ago. Time and experience alone will prove the worth of this form of construction. Small steamers and harbor boats have been successfully built of this material and are in practical operation in Norway, Holland, England and Italy.

Lake Vessels.—The lake type of vessel is worthy of notice, since a considerable portion of American marine insurance premiums are derived from these vessels and their cargoes. Built for quick loading and discharging, with many large hatches, and with engines located in the after end of the vessel, a distinctive type of steamer has been developed. Operated in fresh water, these vessels are furnished, in many cases, with fresh water engine equipment. They are of comparatively light construction as they do not encounter, except on rare occasions, storms of the severity of those experienced on the oceans. These vessels are admirably adapted for their particular service, but when transferred to ocean trade, as has been common in the last few years, they have occasioned much loss of life and property. Only by the rebuilding and refitting of these vessels can they be made fit for ocean trade, and even then they are suitable for

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only the least hazardous coastwise service. The distinction should be observed, however, between steamers built for lake service and lake-built steamers for ocean service. Many of the Great Lakes shipbuilding yards are now producing steamers suitable in all respects for ocean operation.

River and Harbor Craft.—The various types of river and harbor craft are worthy of notice and study. Each serves a particular purpose and produces its own peculiar problems. The opening of the new Erie canal will doubtless produce new types of ocean going barges capable of carrying bulk cargoes down the lakes, through the canal and up and down the coast without breaking bulk. The commercial world stands on the threshold of a new era and shipbuilding in America occupies no small part in the newly awakened commercial life.

Types of Marine Engines.—The motive power of vessels is also worthy of study by those who would be proficient in marine insurance. The reciprocating engine has given way in part to the turbine type, and now with the perfecting of the internal combustion engine there has been opened up an entirely new field of power design. These internal combustion engines are being adapted to use in the largest vessels, with a resultant saving in cargo space and economy in operation, which are two factors of the first importance in profitable ship owning. However, as with all other new devices, the marine underwriter pays dearly for his experience. While the new forms of internal combustion engines may be mechanically successful, the marine underwriter has discovered, to his cost, that an engineer proficient in the operation of a steam engine, may be a failure as the controller of the highly sensitive oil engine. Here, again, practice will make perfect and the internal combustion engine will no doubt emerge from its experimental stage, a practical and efficient marine engine.

Why Does a Vessel Float?—It is not alone desirable that some knowledge of the types of vessels be had, but it is also important that at least a theoretical knowledge be acquired of the natural laws which make it possible for a vessel, built of a material heavier than water and loaded with a full cargo, to float. Whether or not a ship when ready for sea is seaworthy depends not a little on her loading and stability. How much cargo a

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vessel can safely carry and how that cargo must be loaded in order to produce a stable ship are questions which involve many difficulties and can be satisfactorily answered by only those who are expert in such matters. But underwriters and shippers may obtain some idea of the underlying principles of these subjects, sufficient at least to enable them to ask intelligent questions of experts.

Displacement.—Displacement is the name given to the actual weight of the ship when empty or of the ship, its stores and cargo when the vessel is fully loaded. It is measured by determining the weight of the mass of water displaced by the floating vessel, measured in cubic feet or in tons. A cubic foot of salt water weighs 64 pounds, thus thirty-five cubic feet exactly equal one long ton of 2240 pounds. It can be practically demonstrated that a tin watertight box one foot long, one foot wide and one foot high, measuring exactly one cubic foot and weighing one pound will float on the water. If, however, sixty-two pounds of weight are put in the box, it will almost submerge. If one pound more is added, making a total weight of 64 pounds the box will submerge. The slightest additional weight will cause the box to sink. The amount of water displaced by this submerged box is one cubic foot, and as its total weight is 64 pounds, it is fairly demonstrated that the displaced water also weighs 64 pounds. The same fact could be proved by actually weighing one cubic foot of seawater. This being so, if the exact quantity of the water displaced by the ship could be measured in cubic feet and divided by 35 the weight of the ship in tons would be obtained. The formula for obtaining this weight or the displacement in tons is therefore,

$$\frac{\text{Length} \times \text{Breadth} \times \text{Immersed Depth (Draft)}}{35}$$

Displacement Curve.—In the case of a cubical box as used in the foregoing illustration the application of the formula is a simple matter, but in the case of an irregular object such as a ship the figuring of displacement introduces many complications. To facilitate this process there has been devised what is known as a "Displacement Curve" specially designed for each vessel which enables one to read off the displacement when the draft is known.

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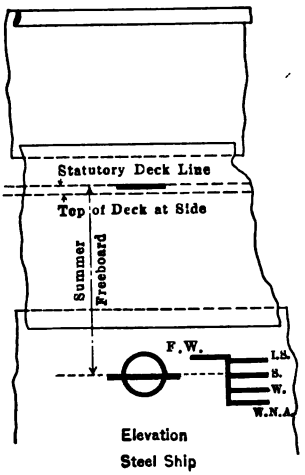
A detailed explanation of how this curve is designed
in "Know Your Own Ship" by Thomas Walton.
tance of this ability to measure the weight of a v
apparent in the loading and discharging of cargo.
of a vessel being known in an unloaded condition
placement shown at that point in the "Displace
every inch increase in draft will indicate the n
weight loaded. Likewise, in the discharge of cargo
ing of fuel each inch decrease in draft will indicat
cargo discharged or of fuel consumed. The diff
the displacement of a vessel when light (unloade
placement fully loaded is the dead weight cap.
of course, be noted in this connection, that if the
Curve" is figured on the basis of sea water whic
ancy of 64 pounds to the cubic foot, allowance n
the case of a vessel lying in a fresh water river whe
of the water will only be 62½ pounds to the cul

When Will a Vessel Float? Buoyancy.—T
naturally raised, What is buoyancy? and why do
Buoyancy is the power to float. A vessel will
enclosed watertight volume is greater than it
(displacement) in tons multiplied by 35. The s
sure of water is all exerted vertically or oblique
in proportion to the depth. At one foot depth th
pressure to the square foot, at two feet depth the
pressure to the square foot and so on. The
horizontally is just as great proportionately, b
power. Thus in the illustration of the cubical tin
which was watertight and weighed one pound,
with 62 pounds weight therein the box would just
than one pound were added the box would sink.
be noted that once having become submerged th
tinue to sink until it rested on the water bed, the
power at the lower depth being exactly offset b
pressure exerted by the weight of water above
applying the same principle to a ship, it will floa
where its own weight, plus the dead weight
multiplied by 35 equals its enclosed watertigh
ured in cubic feet. Of course, a vessel so loa

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seaworthy, because the least additional weight as that of a wave breaking on the deck, would cause the vessel to sink and it would continue to sink until it rested on the ocean bed. For safety, it is essential that a considerable portion, say twenty-five percent, of her total dead-weight capacity be not used in order to provide a margin of safety, known as reserve buoyancy.

Free-board and Load Lines.—This naturally leads to a consideration of free-board and load lines. The free-board of a vessel is the distance measured at the middle of the length of the ship from the top of the main or upper fully enclosed deck to the



water line. The free-board is the measure of the reserve buoyancy of the vessel. How great the free-board in any given ship should be is a matter of very careful measurement depending on its design and structural strength, and of the trade for which it is intended. Several foreign nations have prescribed definite rules for the calculation of free-board and require that vessels under their flags have a definite load line assigned. Credit for load line legislation rightfully belongs to Samuel Plimsoll, an Englishman, who after much educational work, impressed on the members of the English parliament that vessels were putting to sea dangerously loaded with consequent loss of life and property. Legislation was finally passed providing that all British vessels over a certain size should be measured for free-board and a

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mark, now known as the "Plimsoll Mark" cut in and painted on the side of each vessel at the middle of its length.

The Plimsoll Mark.—The "Plimsoll Mark" by the terms of the Act may be assigned by the Classification Societies such as Lloyd's, British Corporation or the Bureau Veritas and consists of two symbols as indicated in the accompanying diagram. All British ships, within the law, carry the disk as the mark in the left is known, and if loaded so that the horizontal line is submerged are overloaded and sailors are relieved of their obligation to sail with such a vessel. If a ship is to be engaged in ocean or world-wide trade she may also carry the second symbol or the gridiron. This mark indicates five different permissible load lines. The upper prong extending to the left and marked *F.W.* shows the depth to which the vessel may be loaded in a fresh water river, the increased buoyancy of the denser ocean water, lifting the vessel to the salt water marks shown on the right of the gridiron. These four prongs are marked *I.S.* or Indian Summer the depth to which the vessel may load during the good season of weather on the run between Suez and Singapore, *S.* or the summer load line, *W.* the winter load line, October to March both included, and *W.N.A.* a line allowing increased margin of safety for vessels operating in the North Atlantic during the boisterous winter season.

The Advantages of a Load-line Law.—The load-line law of Great Britain does not necessarily prevent British vessels from being overloaded, but the law has the great advantage of permitting British sailors to appeal to the British Consul and be relieved from sailing with a ship that is overloaded. The United States Shipping Board is having the "Plimsoll Mark" cut into steamers that are being built in this country for its account. There is up to the present no load-line legislation requiring that ships under the American flag have a fixed load line, although such a bill is now before Congress. It would seem fitting that since vast amounts of American capital both private and public are being invested in the upbuilding of our Merchant Marine, that a load-line law should be passed, not only for the protection of American sailors and passengers on American ships, but also for the conservation of American tonnage, which may readily be lost through improper loading.

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Stability. The Centers of Buoyancy and Gravity.—The seaworthiness of a vessel does not depend altogether on the depth to which it is loaded. The stability of the vessel is of equal importance. Stability may be defined as the ability of a vessel to retain or regain a position of equilibrium. This ability depends on the design and loading of the vessel. In the consideration of the watertight tin box weighing one pound and containing one cubic foot of watertight space, it was observed that any weight greater than 63 pounds sank the box. The cause of the sinking was that two forces, that of buoyancy and that of gravity had first become neutralized and then by the addition of the last pound of weight the force of gravity had overcome the force of buoyancy.

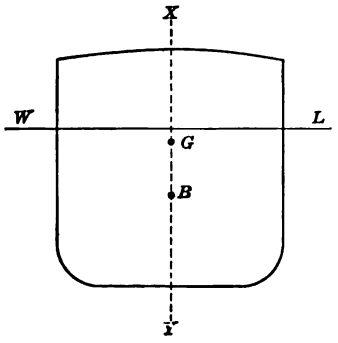


FIG. 1.

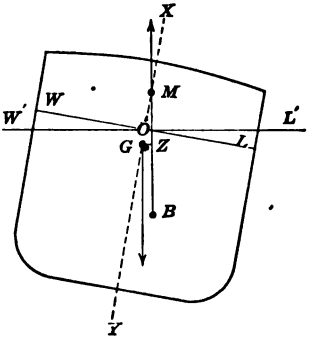


FIG. 2.

The forces of buoyancy meet at a point within a ship called the center of buoyancy. Where the forces of gravity meet is known as the center of gravity. If these two centers are in the same vertical plane the vessel will be in a state of equilibrium, the forces of gravity being exerted downward directly against the forces of buoyancy which are exerted upward. The stability of the vessel depends on the relative positions of the two centers. The fact that these two forces are opposed one to the other, counterbalancing each other, explains why a vessel rests after rolling or pitching.

Why a Vessel Rights after Rolling.—The action of buoyancy and gravity is illustrated in the above figures. The position of a vessel when in a state of rest is indicated in Figure 1 which shows the cross section of a vessel. *WL* is the waterline, the

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point G the center of gravity, and the point B the center of buoyancy, the dotted line XY showing the median line of the cross section, indicating that the two centers are in the same vertical plane. Figure 2 shows the same cross section, the vessel having rolled with a wave. It will be observed that the center of gravity G remains stationary, provided the cargo does not shift, while the center of buoyancy B moves over toward the heeling of the ship. This center moves because the immersed portion of the ship, that part below the new waterline $W'L'$ is of a different shape from the immersed portion in Figure 1, that part below the waterline WL, and the center of buoyancy naturally is found where the forces of buoyancy meet in this new shape. The effect of the moving of the center of buoyancy is to throw out of line the center of the force of gravity G, and the center of the force of buoyancy B, thus creating a lever of stability indicated by the line GZ in Figure 2. This lever acting with a force measured in foot tons equivalent to the weight of the ship and its cargo in tons (displacement) multiplied by the length of the lever in feet, is exerted to draw the ship back to its original position.

The Law of Inertia.—Of course, at this point the law of inertia enters. The tendency of the vessel is to continue to roll in the opposite direction until by the shifting of the center of buoyancy toward the new heeling of the ship, another lever is created, which pulls the ship back again. This movement will continue until the friction of the air and the water counteracts the force of the lever and the vessel will again come to a state of rest as in Figure 1.

Shifted Cargoes.—In the loading of bulk cargoes such as grain, coal, ore or bulk oil great care is used to prevent the shifting of the cargoes during the rolling to which a vessel is subjected. If a cargo such as grain does shift with the rolling of the vessel the center of gravity will shift toward the heeling of the ship, and the vessel will right herself with a shortened lever of stability, only to the point where the two centers G and B are again in the same vertical plane. This will not of course be in the median line of the cross section but to one side of it, and the vessel will float with a list. In this position when buffetted by wind and wave the vessel will regain her listed position if no further cargo

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shift takes place, but if the cargo shifts further the righting lever GZ may become so short as to be powerless and the vessel will capsize.

The Meta-center. Stiff and Tender Vessels.—Again referring to Figure 2 it will be noticed that the vertical line drawn through the new center of buoyancy B intersects the medium line XY at a point M. If the roll of the vessel does not exceed say fifteen degrees this point will remain the same for all rolling less than fifteen degrees, because the wedges WOW' and LOL' are equal in size and really sectors of a great circle and their centers of gravity when the wedges are small, are practically equal distances from the vertical line through the center of buoyancy. It is the position of this point M, with respect to the center of gravity G, that is the controlling factor in the stability of a vessel. The point M is known as the meta-center and the distance between the point M and the center of gravity G the meta-center height. If this distance is great the vessel is said to be *stiff*, the length of the lever GZ will be long and the vessel will roll back quickly. If the meta-center height is short, the lever GZ will be short and the vessel will roll back slowly and is said to be *tender*. It is apparent, therefore, that if a vessel is stiff and rolls back quickly, the shock to the structure of the vessel is exceedingly great. In the case of sailing vessels when the meta-center height is very great, owing to the low center of gravity, the quick return from a roll has frequently resulted in the snapping off of the masts. On the other hand a tender vessel in heavy weather owing to her slow righting power may suffer greatly or in extreme cases may capsize.

The Control of Meta-center Height.—As the meta-center height is the important factor in the stability of vessels it is necessary to know how to regulate this height. This is done in two ways: first, by constructing vessels with sufficient breadth of beam, which has the effect of lowering the meta-center, and thus decreases the meta-center height; second, by so stowing the cargo that the weight is well distributed and the center of gravity properly placed. The business of stowing cargo, known as stevedoring is an art in itself. The question of stowage is important in all cases, but requires unusual attention in the case of a very light cargo such as cotton, or a very heavy cargo

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such as nitrate. In the former case it is necessary to stow heavy dead-weight cargo such as steel or spelter in the bottom of the holds to lower the center of gravity and prevent tenderness. In the case of heavy cargoes it is essential that the cargo be well distributed in the middle of the ship and built up high in bins if necessary, in order to raise the center of gravity and prevent stiffness.

Loading Problems.—It will also be observed that in the case of coal- or oil-burning vessels, as the fuel is consumed the position of the center of gravity may change and may shift to one side if the fuel is not evenly consumed, thus greatly affecting the stability of a ship that has little margin of safety through excessive loading under and on deck. The disregard of these various factors results in marine losses for which underwriters are called upon to respond, and some slight knowledge of the principles underlying them is essential for all interested in maritime affairs. The present work can merely mention these questions without fully considering them, but a very complete discussion of these and other kindred problems may be found in "Know Your Own Ship" by Thomas Walton.

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CHAPTER 4

THE SHIP AS A CARGO CARRIER

Stresses and Strains.—While the marine underwriter does not pretend to be a shipbuilder, yet it is essential that he have more than a theoretical knowledge of the construction of ships. The underwriter relies to a great extent on the information given in coded form in the books of the various classification societies under whose supervision most vessels are built. These societies certify by granting a *Class* that the particular vessel when classified is properly built, especially with respect to structural strength, for the trade and service for which it has been designed. Without some underlying knowledge of the problems involved in shipbuilding these classification books will be unintelligible and may lead both merchant and underwriter into error. The consideration of the classification societies and their books will be passed for the moment, while attention is directed to the stresses and strains to which a vessel in operation is subjected. It is to withstand these that vessels are designed. As already indicated, ships are built to earn freight money, and having a limited amount of buoyancy, each additional ton of weight in the ship structure itself, reduces the dead weight capacity one ton. Herein lies the danger to passenger, shipper and underwriter. Vessel owners naturally wish to make their vessels as light in weight as possible, and were it not for stringent rules of classification societies, the dangers of travel by sea would be increased for passenger, crew and cargo.

The Strain of Unequal Weights.—If an unloaded steamer could be divided into five sections as in figure 1, each of exactly the same weight, it would be found that the supporting surfaces of these sections would be unequal in size. That is, the section containing the machinery would be smaller than that comprising one of the holds, although both sections would be equal in weight and when immersed in water each would displace the same volume as was demonstrated in the consideration of displace-

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ment. Therefore, different sections of the steamer would sink to different depths in the water as shown in figure 2. However, the steamer is not in five separate pieces, but is one inseparable whole. While the total weight is supported by the total volume of water displaced, nevertheless the pressure is greatest at those points where a greater weight is contained in a less volume of space. The steamer must, therefore, be constructed to take up the strain caused by this unequal distribution of weight. Part of this strain is taken up when the vessel is laden with her cargo, because with careful stevedoring the weight of the steamer and her cargo can be fairly evenly distributed over the entire length

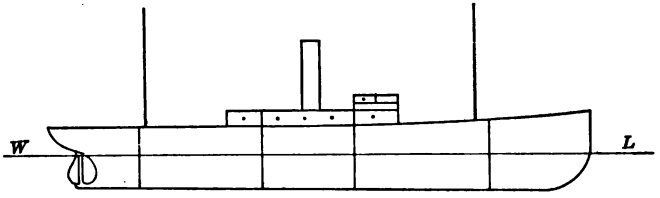


FIG. 1.

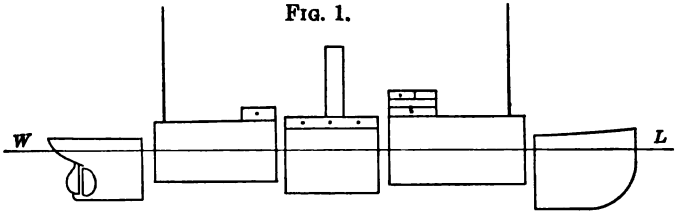


FIG. 2.

of the ship. As steamers are quite often light and sometimes make considerable trips in ballast, this particular condition must be compensated for in the ship structures.

Strain of Lateral Pressure and of Wave Action.—A vessel is also subjected to strain caused by the lateral pressure of water, it being remembered that the pressure exerted at right angles to the submerged surface of a vessel in a horizontal direction is equal to the pressure exerted vertically or obliquely against its bottom. The greater the draft of the vessel the greater this crushing pressure becomes since the whole tendency of the displaced water is to regain its former place. Then again vessels must be built to withstand the strain of riding the waves. They should be so constructed that they are at least twice the length

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of the average wave which they will encounter. If a vessel is caught on the crest of a wave so that her bow and stern are out of water, she has a tendency to bend or break at the point of support. Quite often vessels are seen which are *hogged* as it is called, caused by structural weakness appearing when the vessel was so caught on a wave. On the other hand if the bow and stern of a vessel are each resting on the crest of a wave while the center of the ship has but little water under it, there is a tendency for the vessel to sag at the middle and possibly to break at this point. Either one of these causes was doubtless the reason for the loss of the tank steamer Oklahoma some years ago. The experience gained by disasters occurring to vessels through the effect of the various kinds of strains, has led to improved types designed to meet with safety such stresses and strains.

Panting Strains.—Another strain that vessels must be constructed to withstand, is the pressure against the bow of the ship as it rushes through the water or as it plunges up and down in riding the waves. This causes what is known as panting strains, the tendency of the shell of the vessel being to work in and out as it passes through the water. Then there are the strains caused by the vibration due to the propelling machinery of the vessel. In the case of sailing vessels peculiar stresses are encountered due to the power of the wind on the sail surface. In the cases of auxiliary sail vessels, a combination of engine strain and wind strain is encountered necessitating especially strong construction in this type of vessel.

Other Strains.—Shipbuilders must also counteract the strains caused by the heavy permanent weights carried on the deck, such as the winches and, if necessary, guns carried as a means of defense against the enemy. The shock caused by the firing of these guns also produces unlooked-for results, as in a recent case where the gun practice on a merchant ship developed a crack in the stern frame. It is also customary in some trades to carry heavy deck loads and this added pressure must be compensated for as well as the enormous strain on the deck caused by the shipping of heavy seas. It is also necessary from time to time that vessels be put on dry dock for repairs and cleaning. In such cases the vessel is subjected to unusual strains, the ordinary support of

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the vessel being removed, all the weight being carried at a few supporting points. Vessels must be so constructed that they can withstand this unusual condition.

Vessels in Ballast.—In the underwriting of the hulls of tramp steamers it must be remembered that oftentimes these vessels, in order to secure cargoes, make long voyages in ballast, that is without cargo, but with a certain amount of dead-weight load or ballast sufficient to submerge the vessel to a reasonable depth. Usually in the case of steamers in ballast, the propeller blades are not fully immersed and the working of the propeller partly in the water and partly out necessarily causes unusual strain on the blades. Furthermore, with the pitching of the vessel, the propeller at times will be entirely exposed and, unless great care is taken in the engine room, this will cause the engines to race, thus subjecting the motive power to unusual stresses. The exposed surface of the vessel when in ballast being greater than when loaded, the pressure of the wind and the force of breaking seas are felt with greater severity than in the case of a deeply laden vessel. The fact that the vessel is so far out of the water also makes her less easily managed and she will not answer her helm with the same degree of precision as when fully laden. Added to this, in many cases care is not taken in the stowage of ballast to secure it so that it will not shift. The proper way to stow ballast is first to adequately secure it, and second to so load it as to distribute the weight in such manner that the center of gravity will be as high as possible. The meta-center height is usually great in vessels in ballast and they are consequently stiff and snap back and forth in heavy seas, causing severe strains to the structure of the vessel. While it is true that the modern steamer is equipped with ballast tanks, it must not be assumed that these tanks are built into the vessel to enable it to go to sea without cargo. These tanks when full of water (and they should be either absolutely full or absolutely empty, to prevent water slushing round in the tanks in stormy weather and affecting the stability of the vessel) are a great aid to a vessel sailing in ballast. The primary purpose of the tanks, however, is to give the vessel proper trim when loaded with light cargoes. The trim of a vessel is her position in relation to her load line. There is a line painted on most ships, which shows the

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depth to which she should be submerged when fully loaded. It may be that for special reasons a captain will wish the bow of the vessel to be up a few inches and the stern down a few inches and he so trims the boat when it is being loaded.

The Classification Societies.—As most vessels are built according to the rules and under the supervision of the classification societies, some description of their organization and methods will be of interest. The primary object of these societies is to see that the vessels built under their supervision are fully seaworthy, so far as construction is involved, for the particular trade for which they are designed. It is in no sense compulsory that vessels be built under the supervision of the classification societies. Perhaps it would be well if this were so. However, a shipowner will experience considerable difficulty in procuring insurance on his vessel if it does not appear in the book of some recognized classification society with a mark indicating that it has been classed by that organization. The classification societies promulgate rules for the building of wooden and metal ships. They have at the principal ports of the world where shipbuilding is carried on, agents who are experienced ship constructors or naval architects and who are familiar with the societies' rules and regulations and who are competent to oversee the construction of vessels.

What a "Class" Signifies.—If a man intends to build a vessel, he will go to a marine architect and say that he wants a steamer of a given dead-weight capacity, suitable for a named trade, to be built in such manner that it will receive the highest class at say, Lloyd's or the American Record. The new owner may not be particular about the type of steamer which he gets, if it will fulfill the service for which he needs it, obtain the desired speed and will not exceed in cost the amount which he desires to spend. The architect accordingly designs a steamer to be built to the requirements of Lloyd's or the American Record. In the front of the books of these classification societies, there is set forth in great detail the standards of construction, material and workmanship which they require in a vessel, before they will grant their class. If the steamer is to be built under their supervision the plans and specifications will be submitted to them for examination. If approved, construction will be commenced and from

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time to time their surveyors will examine the work done, and will also make tests of the materials used in the construction of both the hull and the machinery. When the vessel is completed, a class will be assigned to the vessel, requirement being made, however, that as a condition precedent to the continuance of such class, periodical surveys shall be made and such repairs and replacements made as the surveyors of the society may demand. These periodical surveys may be made at any port where there is an authorized surveyor of the society and where proper dry-docking facilities are obtainable.

Lloyd's Register.—These classification societies play an important part in marine underwriting. In fact the earliest "books" were those compiled by British Underwriters setting forth in brief and coded form, their opinion of the various vessels then in existence. The first "books" were brought out in 1764, 1765 and 1766 and were very carefully guarded by their possessors. The paucity of information in these books, compared with the wealth of facts set forth in the modern book shows the gigantic progress made in such matters in the last one hundred and fifty years. These volumes issued by the underwriters at Lloyd's continued to be published from year to year, but in 1799 a rival register was set up by shipowners who were dissatisfied with the treatment accorded by Lloyd's. The two registers continued to be published until 1833, when they were combined into one volume known as the "Register of British and Foreign Shipping." The following year the book appeared as "Lloyd's Register of British and Foreign Shipping" which has been published continuously until the present day. The organization publishing this book is entirely distinct from the Underwriting Association of Lloyd's London and has on its managing board underwriters, shipowners, merchants and shipbuilders. It is perhaps fair to assume, however, that the underwriting fraternity is the dominant factor in the organization. They pay for the mistakes of merchants, architects and shipbuilders and it is but natural that they should be the chief advocates of better built ships.

Rival Organizations.—Rival organizations were started in other countries, because it was felt, and with reason, that Lloyd's discriminated against vessels of other than British build. Now

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there are a number of societies all performing the same kind of service and naturally in the bidding for business modifying the stringency of their requirements, with consequent detriment to the soundness of the vessels constructed under their supervision. However, underwriters soon discover whether or not the requirements of the societies are as stringent as they should be and classification is not of equal value in all societies. The fact that a ship has a class in one of the less reputable societies warrants the natural inference that her construction is such that the better societies would not class the vessel. However, the mere fact that a vessel is unclassed does not necessarily condemn it. Lack of class usually indicates one of two conditions, first, that the vessel is of such inferior construction that no classification society would be sponsor for the boat, or second, that the vessel may be constructed so much in excess of the requirements of any society that the owners are not warranted in incurring the additional expense necessary to have the boat classed. This latter condition exists with many steamers of the first-class passenger and freight lines.

Necessity for Understanding Classification Society Codes.—It is absolutely necessary for marine underwriters and important for merchants also, that they be able to read intelligently and understandingly the books of the classification societies. The information is printed in coded form, each book having its own code which appears translated at the opening of the volume. It must be remembered that each organization has classes of different degrees and it should not be inferred simply because a named steamer is classed in the American Record for instance that it is fit for the intended employment. Classes are given for harbor, river, lake, coastwise, ocean and other services, and unless the class marks are understood, underwriters in insuring and merchants in engaging freight space may be led into serious error. A portion of a page out of the American Record is reprinted here, which will give an indication of the wealth of information which is furnished in small compass by these volumes.

The American Record.—This record is published by the Bureau of American and Foreign Shipping, an organization started many years ago to foster American shipping and reorganized within recent years on a plan commensurate with the

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No. Off. No. Signal Letters	Name of Vessel and Master / Material, Detail of Decks, etc.	Rig	Nation	Hailing Port	Reg. Dimensions Lth.	Bth.	Dth. Deck Erections	Mld.	Tons Dwft	Built When	Built Where. Builder.	Owners.	Remarks. Engines, Boilers.	Ship—Class—Date of Last Survey No., Date, and Port of Last Periodical Survey. Engines & Boilers—Class—Dates. Tail Shaft Drawn—Date	Other Classification
525. ✠ 131,210 TMNL	**Gwendolen Warren** 1D	Trn	Br	Liverpool	125	30.8	10.7		274 318	1916 3	Liverpool, (Robie McLeod.) [N. S.	F. K. Warren	Sp,Bch,P;Gif; s rps,clk,M10,16;Dkd12,17 (Stcd)	✠A1 12 years 3,16	
526 ... 128,484 HNDQ	**Gwladys** Steel 1D;B;Deep framing 6BH	Scw Sch	Br P31′	London B96′ F32′	340.6 50.5	24.7			2530 3929 W. Bal	1908 9	Newcastle, (R. Stephenson & Co., Lim.) [Engs.	P. Samuel & Co. (Lim.). Mgrs.	3CylTE25,40,67×45; 28B;WP165lb;314NHP.		BL
527 ... 102,113 NFSP	**Gwydyr Castle** xNewfield 1D;B	Bk	Br P38′	St. Johns F33′	249.2 27.2	21.5			1408 1512	'93 10	Dundee, (A. Stephen & Sons.) [Scot.	Job Bros. & Co. (Lim.)	Stl;1BH		BL
528 ... 86,365	**Gwynedd** Steel 2D	Scw Tug	Am	Phila.	88.2	19	10.2		78 115	'96	Phila., Pa. (Neafie & Levy S. & E. B. Co.)	Reading Co.	2CylC15,26×22; 1CRTB10′7″b11′L; rps7,03;Dkd,clk dk5,07		
529. ✠	**Gyldenpris** xOgeechee Steel 2D;Mchy aft; Web frames 6BH	Scw Sch	Nor	Bergen	300	41	25.8 28.6		2039 2667 W. Bal	1906 12	Quincy, (Fore River S. B. Co. [Mass.	W. Gilbert	3CylTE18,28,48×40; 12SB;13′b11″L; WP175lb; 200IHP;65GS;1960HS; EAC;rps5,13; rpd6,16; Dkd10,16	✠A1 20 years 12,06 W. I. & Coastwise; shft drn9,16	
530... JWQR	**Gyller** Steel 1D;B;Welf dk 4BH	Scw	Nor 171.9 Q42′	Holmest'd 26.6 B40′	12.9 F23′				318 533 W. Bal	'92 2	Christiania, (Akers Mek. Verksted.) [Nor.	Emil Harstad, Mgr.	3CylTE13,21,33×27; 15B;WP160lb;64NHP; rps12,1900;Dkd1,18		N
531... 120,863 HCTL	**Gyp** xKylestrome Steel 1D;B;Deep framing 6BH	Scw	Br P30′	London B94′	340 47.8 F33′	23.7			2105 3290 W. Bal	1905 6	Stockton, (Craig. Taylor & Co.) [Eng.	Preston Stm. Nav. Co. (Lim.)	3CylTE24,40,65×45; 28B;WP180lb.;308NHP; Dkd2,18		BL
532. ✠ 203,583 KVQH	**Gypsum King** Steel 1D;sus.stg. 4BH	Scw Sch	Am 151.9	New York	29.6	18.2 19.9			331 581	1906 10	Pt. Richmond, (Burlee D D. Co.) [N. Y.	J. B. King Transp. Co.	3CylTE17,27,45×36; EAC;1100IHP;rps,clk dk6,13; Dkd11,17s rps10, 18	✠A1 20 years 11,06 No.2,8.2,16;NY2,16; shft drn 10,18	
533. ✠ 215,393 LHMW	**Gypsum Prince** 1D;B Steel 4BH	Scw	Am 117.6	New York	25.1	13			148 299	1917 7	Baltimore, (Spedden S. B. Co.)]Md	J. B. King Trans. Co.	3CylTE16,24,41×30; 18B,14′9″b12′L;WP180lb.; 88GS;2905HS;1000IHP.	✠A1 Towing Service.	
534. ✠ 126,647 KHFW	**Gypsum Queen** xDaniel Willard Iron 1D 4BH	Scw Tug	Am 134.5	New York	25.5	14 4			181 361	'90 7	Camden, (J H. Dialogue) [N. J.	J B. King Trans. Co.	3CylTE16,28,40×28; 28B;10′3″b11′2″L; WP160lb.;800IHP;Dkd6,16	— Exp.	

The ✠ prefixed denotes Vessels built under Supervision of the Bureau or classed under Special Survey. No Vessel will be classed or rated unless surveyed and opened according to rules. The publication of the particulars of unclassed vessels is for general information only. As no surveys have been held on such vessels, no opinion is expressed as to their character.

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position which the American Merchant Marine is to take in the world's commerce. Its success will depend largely on the support and encouragement which it receives from the underwriters, merchants, shipowners and shipbuilders of this country. It is a gratifying indication of the trend of the times, that the larger part of the ships being constructed for the United States Shipping Board are being built under the supervision of this bureau.

Underwriters' Surveyors.—The well-organized underwriting office does not depend altogether on the records of vessels as shown in the Classification Society Books but has a staff of competent surveyors of its own. It will be appreciated that a steamer apparently in first class condition in the Society's Book may have experienced disaster, or may have been permitted to run down since her last Classification survey. It therefore is prudent for the underwriters so far as possible to have their own vessel records and their own surveyors, in whose judgment they have confidence, to specially report on vessels which are offered for insurance.

Underwriters' Organizations.—The marine insurance business is well organized and to aid and protect underwriters there have been established here and abroad societies whose purpose it is to foster the business and to obtain uniformity of action among underwriters. In this country there was organized some years ago the American Institute of Marine Underwriters whose purpose it is to formulate general clauses to meet special conditions, to follow and recommend or oppose proposed legislation in regard to marine insurance and to keep in close touch with similar organizations in Great Britain and other foreign countries. There are also other organizations such as the American Hull Underwriters' Association and the Atlantic Inland Association whose purpose it is to promulgate rates and conditions for the insurance of the special class of risks coming within their purview. These organizations are helpful in stabilizing rates and afford a common meeting place where the assured or his broker can discuss proposed insurance and reach a better understanding of the requirements of underwriters.

Underwriters' Boards and Loss Agents.—On the loss side of the business there are the Underwriters' Boards such as the New York Board of Underwriters and the National Board of Marine

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Underwriters, who have representatives at the principal ports of the World. These representatives send prompt reports of disasters occurring within their territory and are competent to take charge of operations looking to the safeguarding of the imperiled property. They also survey damaged goods and issue certificates showing the nature and extent of the injury suffered. These Boards supervise the loading of vessels and promulgate rules for the proper stowage of bulk and other extra hazardous cargoes. Their representatives grant certificates showing that vessels are fit to load the proposed cargoes and when loaded certify that the loading is proper. Obviously, these organizations are merely voluntary, and are powerful protecting factors in overseas commerce only in so far as they receive the support and encouragement of underwriters and shipowners. The work performed by Lloyd's Agents, that is the agents of the Underwriting Organization of Lloyd's, London as distinguished from the Classification Society, is somewhat similar, but is much more extensive in its application. These agents are also news gatherers and daily and hourly in fact send by cable or letter interesting facts in connection with marine matters, which are published in the daily and weekly papers of the organization. A similar work is performed in this country by the Maritime Association of the Port of New York.

Salvage Associations.—The Salvage Associations are usually privately organized, but sometimes have on their boards of managers representatives of the underwriters. These organizations, as the name implies, attend to the salvaging of both ships and cargo when damaged or in a position of peril. Some of these organizations such as the London Salvage Association have their own wrecking department fully equipped with vessels and machinery suitable for salvage operations. Other organizations call in, when needed, private wrecking companies who are experienced in salvage work. These associations do much to reduce marine losses and are of value not only to the underwriters but to merchants and shipowners as well.

Maps, Charts and Port Books.—The Underwriting office itself must be equipped with or have access to maps, charts and port books showing the ocean tracks, paths of the winds, currents, lighthouses, wireless stations, particulars of ports with respect to

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depth of water, berthing accommodations, facilities for supplies of fuel and stores and the numberless other items of information which it is necessary for an underwriter to know in order to intelligently consider a risk from the geographic viewpoint. Improvement in port conditions and changes in commercial methods are so rapid that an underwriter must keep abreast of the times and be informed as to present conditions with respect to shipping and commerce, not only in his own country but also in foreign nations.

The Tools of the Underwriter.—The classification societies, underwriters' organizations and the various publications in regard to marine matters may be called the tools of the underwriter. As every skillful workman must be fully equipped with the tools necessary for his particular work and understand their use, so the marine underwriter must have his tools and fully understand their use and purpose.

Factors in Underwriting-Nationality.—Having in mind this general résumé of what may be called the physical background of marine insurance, it will be of interest, before proceeding to the consideration of marine insurance principles, to mention some of the factors which an underwriter must take into account in deciding whether or not a risk offered is acceptable. First of all the question of the nationality of the vessel is of great moment. In war times its importance is apparent, but in times of peace while this factor is of only slightly less importance, its bearing on the risk lies beneath the surface. It is a well-known fact that certain nations have produced more skillful mariners than others. The adaptability of a people to a seafaring life is largely a matter of temperament. This fact is of no little importance to underwriters, because at a time of crisis, when the captain and crew have to think and act quickly and clearly, the citizens of those nations whose heritage has been connected with the sea, seem to have the innate ability to do the right thing at the right time and to take advantage of every opportunity to preserve the ship and the cargo.

Owners, Managers and Masters.—The ownership of a vessel is also a matter of much concern. It is a singular fact that some owners run their vessels without incurring many accidents, while others born perhaps under less lucky stars are always in

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trouble. An underwriter is not so much interested as to why one ownership is good and another bad, as he is in the fact itself. An owner or a line may innocently acquire a bad reputation, but more often such reputations are the result of incompetent management. Poor management results in deteriorated, insufficiently equipped vessels, often incompetently officered and manned. Truly in shipowning and ship managing "a good name is rather to be chosen than great riches." There is another side to the question of ownership. An owner may keep his property in good condition, he may employ competent officers and crews, but his reputation for fair dealing in cases of disaster, when so much depends on the attitude of the shipowner, may make underwriters wary of accepting risks on his vessels. Up to within a year or two Lloyd's London published a volume which listed all British steamers under their owners. These lists contained not only all boats presently owned, but all vessels formerly owned and which had met an untimely end through disaster or had ended their career in the scrap heap. This book gave the history of each vessel showing the various disasters to hull and machinery and where they had occurred. This volume, which will doubtless be published again when the world resumes its peaceful course, was obviously published for the confidential use of underwriters, and afforded a vivid picture of the results of good and bad management. Lloyd's have also a record, giving in brief form, statistics in regard to the life career of all British ship masters, showing the ships which they have commanded and what misfortunes they have experienced with their vessels. The value of a risk is influenced not a little by the character of the master to whom the venture is entrusted.

Structural Characteristics of Ship and Its Physical Condition.—The material of which the vessel is built, her structural plan, her engine, horsepower and interior condition with respect to the protection of cargo which may be carried in her hold are all matters of moment to underwriters. If a great single deck bulk freighter is put on the berth to load a general miscellaneous cargo, the underwriter must think what will be the effect on barrels of oil or other cargo placed in the bottom of the hold which will have to sustain the pressure of the weight of cargo loaded above. Or if it be a tank steamer which has carried bulk petroleum to

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Cuba and is to return to the United States with a cargo of molasses, the underwriter will be interested in knowing if the hold has been steamed or otherwise cleansed before the molasses is loaded. If the vessel is to carry a perishable cargo such as green coffee or cocoa beans it is pertinent to inquire whether the holds are fitted with cargo battens and properly dunnaged to protect the cargo from the moisture which may condense on the inside of the vessel. If a full cargo of grain is to be loaded, question will arise as to whether the vessel has been properly equipped with shifting boards and wing feeders. These illustrations will serve to indicate the trend of an underwriter's thought in considering the physical condition of the vessel.

Other Considerations.—Again, the season of the year during which the voyage is to be made becomes of interest when we recall the periodic storms which run their courses on the ocean and the ice conditions which exist at certain seasons on the Great Lakes and in other places in the cooler latitudes. In the case of cargo insurance the kind of goods to be insured is important, considered not only for its intrinsic qualities, but also for its usefulness at the port of destination. It may be that in the event of disaster there will be small salvage to the goods or there may be no market at the port of destination or at an intermediate port of refuge for damaged goods of the particular character in question.

The Measurement of Ships.—An underwriter is often asked to quote on a full cargo of grain, or other bulk cargo, it may be without any definite information being given as to the quantity to be laden. It is important that he have some rule by which he can quickly estimate the quantity which the vessel can carry and from this quantity arrive at the approximate value of the cargo. In the books of the classification societies there is usually given in the tonnage column two figures, one larger than the other. In a previous chapter the displacement of a vessel was described at the weight of the vessel in tons. The tonnage of a vessel as shown in the classification society books is not displacement tonnage but measurement tonnage. Many years ago in order to gain uniformity in the measurements of vessels, there was arbitrarily adopted in Great Britain a measurement ton of 100 cubic feet, and this unit of measure has generally been ac-

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cepted by other nations. The tonnage shown in the Classification Books therefore indicates the number of tons of 100 cubic feet each contained in the boat, the larger figure indicating the number of measurement tons in the enclosed watertight portion of the ship, without any allowance being made for necessary engine, crew, fuel and store space; the smaller figure showing the measurement tonnage with these spaces deducted. The larger figure is known as the gross tonnage, the smaller, the net tonnage. Sometimes in the case of passenger boats an intermediate measurement of the vessels, before the passenger accommodations are deducted, is shown. There are elaborate rules for the measurements of gross, intermediate and net tonnage, which vary in different countries and in connection with the tonnage dues at the Panama and Suez Canals.

The Measurement of Cargo Capacity.—While the measurement ton is 100 cubic feet, a ton of average deadweight cargo occupies only about 40 cubic feet. This is true of grain and many other bulk cargoes. It is therefore possible in such cases to load about two and one-half tons of cargo in one measurement ton of space, and as each thirty-five cubic feet of water will support one ton (see ante, p. 69), it will therefore be quite possible to load more than twice the net registered tonnage with grain and still not have exhausted the supporting power of the water. Whether or not this quantity of grain could be loaded would depend somewhat on the structural arrangement of the particular vessel in question, and the necessity of having adequate freeboard. In this connection Professor Emory R. Johnson, in Ocean and Inland Water Transportation, cites the following rule in regard to loading·

"The ratio of net register to cargo tonnage of the modern freight steamer loaded with general cargo is as 1 to 2¼. In the large modern sailing vessel the cargo tonnage of the loaded vessel will average about 1⅔ times the net register."

To apply this rule to the proposed full cargo of grain, the underwriter would multiply the net registered tonnage, by say 2¼ and multiplying this result by the value of the grain per ton obtain a fair approximation of the values of the contemplated cargo. Some graphic idea of the cargo capacity of a freight steamer of

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say 4000 net tons may be gained by considering how much bulk there is to 9000 tons of wheat, the quantity which such a vessel could carry under the above cited rule. Each ton of wheat consists of approximately 40 bushels, so that this vessel could carry 360,000 bushels. The average yield per acre is say 30 bushels, so that this cargo will represent the yield of 12,000 acres or about 20 square miles of land. To carry this grain to the vessel will require a train of 180 cars, each carrying 50 tons and stretching over a mile in length. Such are the giant freight boats that enable this country to be the granary of the world.

Cargoes and Shipping Packages.—While it is true that the physical condition of the ship itself must be considered, it is no less true that the underwriter must give thought to the intrinsic qualities of cargo which is offered for insurance and of the nature of the package in which such cargo is shipped. In some countries it is a difficult and expensive matter to obtain wood to make packing cases and accordingly articles easily damaged, packed in inferior containers place an additional burden on underwriters. It is also a fact that packing cases or barrels used in importing goods into a foreign country, may be again used in the export of goods. This is notably true in the shipment of oil from the Far East where the second hand barrels and cases in which American oil has been imported are used in the export of the native oils. The consequence is that heavy leakage claims result. An underwriter's education is never completed. Day by day he must keep abreast of the new conditions which are occurring in all parts of the world and be able to deduce the effects which these new conditions will have on marine underwriting.

The Moral Hazard.—Before passing from the consideration of the factors which are important in the judging of risks, mention must be made of what is undoubtedly the primary and most important factor in marine underwriting. As will be pointed out in subsequent chapters, the whole fabric of marine underwriting is based on good faith and fair dealing existing between underwriter and assured. This element in the marine contract is little talked of but is ever present and is known as the "moral hazard." An underwriter must rely to a very large extent on the statements made by a merchant or shipowner with respect to the risk offered for insurance. To be sure, the underwriter

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has some documentary evidence in the classification books respecting the vessel, but in many cases he knows nothing definite regarding its present condition. When the subject matter is cargo, the underwriter must rely almost entirely on the integrity of the insured, and his willingness to tell of any unusual circumstances connected with the shipment. The underwriter is presumed to know all the usual conditions in regard to various kinds of goods and their mode of shipment, but as a rule he is working on theory alone and has no opportunity to actually view the goods. The result is that an underwriter must be a reader of character and a judge of the hearts and intents of men. After a loss has occurred, it is too late to discover that an assured is a deceiver or a skillful talker, perhaps telling the truth in regard to the risk, but not the whole truth. The experienced and careful underwriter must be able to judge the character of a man at sight, instead of discovering his deficiencies in the expensive and bitter school of experience. And so in passing to the consideration of marine insurance principles and practice it is well to understand that the profession of marine underwriting is a serious one, calling for the greatest degree of skill and knowledge and for a more than ordinary equipment of common sense and ability to judge men.

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CHAPTER 5

THE CONTRACT OF MARINE INSURANCE. RULES FOR CONSTRUCTION

Definition of Marine Insurance.—Marine Insurance is a contract of indemnity whereby one party called the assurer or underwriter agrees for a stated consideration known as the premium, to indemnify another party called the insured or assured against loss, damage or expense in connection with the subject matter at risk if caused by perils enumerated in the contract known as the policy of insurance. It should always be borne in mind that a policy of insurance is a personal contract and insures the person or persons interested in the subject matter and not the subject matter itself. The policy promises to indemnify the assured for damage arising out of the loss or damage of the property insured, but does not guarantee the continued existence or replacement of the thing itself.

Not a Perfect Contract of Indemnity.—A marine insurance policy is not a perfect contract of indemnity. To indemnify means to make good, to put a person back in his original condition with respect to a specified thing or a certain condition. Insurance strives so far as possible to make good whatever financial loss a person may have suffered, through the destruction or depreciation of the intrinsic value of the commodity to which the insurance relates, but does not endeavor to reimburse the assured for any sentimental or esthetic value unless it is definitely possible to financially measure such value and the underwriter and assured have mutually agreed that such value shall be insured.

Only Fortuitous Losses Covered.—Marine insurance was never devised to protect the assured against all loss or damage which may overtake his property, but only against those losses which are fortuitous and beyond the control of the assured. The policy will not cover damages which are inevitable or usual because of the nature of the goods, the shipping package or the voyage in question. Competition, it is true, has greatly modified this rule,

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but the principle remains and should always be enforced in the case of *vice propre* losses; that is losses which are the result of the inherent qualities of the subject matter insured and not the result of casualty. Perhaps, the best illustration of what is meant by *vice propre* or inherent defect is the loss caused to flour through the appearance under certain conditions of weevils and grubs the result of the very nature of the commodity itself and not caused by any outside force.

Negligence Should Not be Covered by Policy.—Neither should marine insurance agree to indemnify the assured against losses which are the result of the negligence or carelessness of those into whose custody the property is given. That is, the insurer should not assume liability for loss or damage caused through the neglect of carriers whether private or common. The law charges the carrier under the bill of lading with certain duties which he should be compelled to perform, and the assured should not be permitted because of insurance to become remiss in his duty of enforcing carriers to comply with their obligations. True, it is often easier to insure against some risk which is an obligation of the carrier than it is to enforce the obligation without the use of legal pressure, but the inevitable result of such a course over a period of years is detrimental to all concerned. This is abundantly shown in the matter of pilferage claims. Such losses are the result of negligence on the part of those into whose custody property is entrusted. Through lack of protection packages are opened and part or all of the contents removed. For this loss the carrier responds if it can be shown that the pilferage took place while the goods were in his possession. Owing to the delay in collecting such losses, underwriters were urged to give protection against such losses so that the assured might be promptly reimbursed and not have to wait on the convenience of the carriers. Some underwriters consented, with the result that the writing of pilferage insurance became general. The carriers knowing that the shipper could obtain protection against such losses, were less ready to settle these claims practically denying liability in many cases and interposing all sorts of objections to the claims presented. Limitations of liability have also been inserted in bills of lading where possible, limiting the amount for which the carrier assumes liability to a merely nominal sum.

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The result is that some carriers have successfully, if not legally, avoided their liability for these losses and as a consequence have relaxed their watchfulness, with the natural result that pilferage losses have assumed enormous proportions. Underwriters are in a quandary to know how to extricate themselves from a difficult situation into which they have unwittingly allowed themselves to be drawn. Eventually the assured will pay for these losses and upon him will be visited the result of his demand of underwriters for protection against losses which are the liability of carriers

The Effect of Insurance.—The procurement of marine insurance by the assured results in the distribution to the ultimate consumer of the losses which overtake property in oversea and overland commerce. The underwriter charges a premium for the insurance of the risks which he underwrites. This premium charge becomes one of the items in the invoice for the sale of the goods, and in the freight rate, which is also an item in the invoice, there is included indirectly part of the cost of insuring the hull of the vessel. In this way the cost of insurance becomes part of the price of the goods and is an indirect charge on the consumer. The underwriter assumes the burden of the losses and thus stabilizes prices and makes possible large commercial transactions.

The Law of Averages. Competition.—In fixing rates adequate to compensate him for the losses paid and the expenses incurred, and to produce a profit on the capital invested, the underwriter works on the law of averages. This average is not the result shown by the outcome of a few risks but the result shown by many risks of the same kind over a period of years. Ten years is a fair period from which to draw deductions, for in this length of time practically every condition peculiar to a given trade will occur and the number of risks run in such a period will be sufficiently great to enable fairly accurate conclusions to be drawn. But in the last analysis such deductions are not more than an approximation toward scientific accuracy. Competition serves to hold rates down to the point where there is only a fair margin of profit on the capital invested. If the rates on a certain line of insurance are such that an undue margin of profit results, underwriters who are not actively engaged in this particular branch of the business will cut rates in order to get a share of the good business and those who are underwriting this particular kind of

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risk will necessarily be forced to meet this competition. the other hand if a certain line of business proves unprofita underwriters will forego this class of insurance unless higher r will be paid by merchants or shipowners. So it is that r fluctuate within narrow limits. In addition underwriters alw face the possibility that if undue profits are made on any parti lar class of business, self insurance may result, merchants shipowners figuring that if the underwriter can make money assuming the risk they can save money by carrying it themsel But unless they have a very large and diversified business s reasoning is fallacious, as they will not have sufficient distribut of risk to permit the law of averages to play its part and a sev total loss may furnish a pointed object lesson of the folly of insurance under ordinary conditions.

Modern Policy Broad in Its Protection.—Transportat insurance would probably be a better modern name for so-ca marine insurance. The present-day marine insurance policy goods covers property from the time it leaves the shipper's w house until in due course of transit it is delivered by land and water conveyances to the consignee's warehouse. It is in broadest sense transportation insurance by land and/or water consequently merchandise should never be covered by a ma policy, after transit has ceased or after the property has l placed in the custody of the owner.

Good Faith.—In no branch of the insurance science does g faith play so large a part as in the marine field. An underwr is often asked to insure a ship or a cargo thousands of miles a without making any inspection of the risk. In such cases he l rely absolutely on the statements made by the applicant in s as they relate to matters which cannot be confirmed by information which the underwriter has at his disposal in the cl fication society books and in the shipping papers. He is, true, protected in a measure by the implied warranties, suc seaworthiness, which are read into the contract, but to a g extent he must rely on information which he cannot conf It is true therefore that good faith and fair dealing are the cor stones on which the marine insurance business is foun

Elements of a Contract.—To have a valid contract of insur the following elements must appear, viz.:

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1. The parties to the contract must be legally competent to make a contract.
2. The Assured must have an insurable interest.
3. A valid consideration must pass (the premium).
4. There must be a meeting of the minds of the contracting parties.
5. The contract must have a legal purpose.

Corporate and Individual Underwriters.—Basically a marine insurance contract is no different from any other. The legal safeguards surrounding contracts in general are applicable to insurance contracts, and in addition there have been read into the latter many conditions for the protection of both assured and underwriter which are not included in other forms of agreement. In this country at the present time marine insurance is conducted almost exclusively by incorporated companies. These corporations chartered by the various states are legally competent to engage in the business of insurance so far as they are given authority under their charters. There seems to be no valid reason, however, why individuals should not engage in business as underwriters. Formerly this was done, but the American mind has turned more readily to the corporate form of underwriting with its published statements of assets, liabilities and surplus. This condition contrasts greatly with the composition of the English marine insurance market wherein individuals underwriting at Lloyd's and elsewhere form an important part of the market. Any one may be an assured if he is legally competent to enter into a contract. That is, he must be of legal age and of sound mind and must be otherwise within the rules which the law prescribes regarding contracting parties.

An Insurable Interest Necessary.—But no person can become a party to a marine insurance contract unless he has an insurable interest. That is, the assured must bear such a relation to the insured subject, that directly or indirectly he will be benefited by its safe arrival or continued existence or be injured by its damage or loss. In other words a person cannot legally, merely because he knows that there is certain property subject to marine hazards, take out insurance on that property for his own benefit. The party seeking insurance must bear some provable relation to the property itself in order to insure it for his own benefit,

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or there must exist some legal relation of agency to enable one to take out insurance for the benefit of another who has a valid insurable interest. Insurance which does not stand the test of these two conditions is void in law, and in some of our states and in Great Britain is prohibited by statute.

The Premium a Valid Consideration.—The third requirement of the marine insurance contract is that there be a valid consideration. In every legal contract it must be possible to show that the person who performs or agrees to perform some service receives or will receive some adequate compensation. The parties themselves are, however, the judge of the adequacy of the compensation, and its intrinsic value is not as important as is the fact that the parties agreed to some measure of compensation. So we find in all insurance contracts provision made for the payment by the assured to the underwriter of a sum of money called the premium. How large or how small this amount may be is legally of no consequence, if the assured and the underwriter have mutually agreed on the amount charged. If the insured subject is lost the underwriter cannot refuse to pay on the ground that the premium was too low, neither can the assured in the event of safe arrival legally demand part of the premium back.

The Minds of the Contracting Parties must Meet.—It is a basic principal of the law of contracts that the minds of the parties must meet. If the assured and the underwriter enter into negotiations for insurance relating to a certain subject or condition, and if the assured has one subject or condition in mind while the underwriter has a similar but, in effect, entirely different subject or condition, even should they complete their negotiations and a policy be issued, it will not be valid or enforceable in law. The contract as issued does not relate to anything which was common to the thought of both parties, and therefore is null and void and of no effect. It is therefore of the highest importance in the procuring of marine insurance that a full disclosure of all facts be made, so that no misunderstanding may exist as to the amount to be insured, the quantity and kind of property, the carrying conveyance, the voyage to be run and the date of sailing or shipment. How important each of these elements of an insurance contract is will appear in a subsequent detailed discussion of these phases of the insurance policy. The question of fair dealing plays

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such an important part in marine insurance that the law has required a fuller disclosure of the facts relating to these contracts than it does with respect to other contractual relations.

A Legal Purpose Necessary.—That a contract must have a legal purpose is self-evident. The law will not tolerate practices against public policy under the guise of insurance. Gambling done in the form of insurance is as injurious to the public morals as is gambling done in a less respectable way. The issuance of insurance in connection with transactions which are contrary to law, is tainted with the same defect as is the transaction to which the insurance relates. Insurance is a necessary part of the commercial life of the nations, but aids in the conduct of commerce only so far as it complies with national and international law.

Direct and Indirect Placing of Insurance.—Two methods of placing insurance are in vogue. A merchant may treat with an underwriter directly or he may turn over to a broker, who is trained in the practice and principles of marine insurance, the placing of his insurance for him. Each method has its advantages. An insured in dealing directly with an underwriter may be able to present the risk in a more favorable light than the broker, because he has a fuller knowledge of the peculiar character of the property which he is insuring and can in many cases demonstrate to the underwriter the result of the action of sea water and the effect of handling on the commodity on which insurance is desired. On the other hand, if the merchant has not a fair understanding of insurance principles, he may greatly harm himself by asking for and accepting insurance which does not fully protect his property. Thus it has happened in not a few cases within recent years that an assured has unwittingly assumed that the ordinary form of marine policy covered the risks of war.

Brokers.—If the business of a merchant or shipowner is so large and diversified that he has to deal with many underwriters, or if his business is smaller but he has little knowledge of the intricate problems involved in marine insurance he will do well to give the placing of his insurance into the hands of some competent broker. The subject of brokers will be given further consideration in a later chapter. It will suffice to remark here that a competent broker should have the same technical knowledge and training

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as an underwriter. Much progress in underwriting has resulted from the demands of brokers for new forms of protection, but on the other hand the demands of brokers controlling large volumes of business have caused underwriters at times to depart from sound underwriting principles. The broker occupies an anomalous position. He is employed by the assured but is paid by the underwriter and accordingly occupies the invidious position of trying to please both parties to the insurance contract.

The Insurance Application.—In placing insurance whether it be an open contract or a special insurance, the basis of the contract is the insurance application. If a merchant wishes to insure 100 cases of dry goods from New York to Bombay, he goes to an insurance company directly or through his broker and fills out a printed form providing spaces for the name of the assured, for the account on whose behalf the insurance is desired and for the payee of any possible loss. Spaces are also provided for the amount of insurance desired, the number of packages and kind of goods, the name of the carrying vessel, the points of shipment and the destination. The approximate date of shipment or of the sailing of the vessel should also be given (see application form Appendix, p. 370).

Binders and Inquiries.—Having filled out this application form in duplicate, the assured or the broker presents it to the underwriter who considers the facts presented, and then turns to the classification society books or to his own private records for a description of the vessel. He then either names a rate and indicates the conditions under which he will grant insurance or declines the risk. If the rate and conditions are acceptable to the assured or broker he will sign the original application, hand the forms to the underwriter who initials the duplicate returning it to the assured or broker, and a binding contract of insurance has been entered into. All that now remains to be done is for the underwriter to fill out the formal policy of insurance which he signs and delivers to the assured or his broker. It may be that the assured or his broker will wish time in which to consider the rate and conditions quoted, in which case the application forms will not be signed but one copy will be retained by the underwriter on a "not binding" file. This is merely an inquiry for and a quotation of a rate and in marine insurance terminology is

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known as an "inquiry." This quotation like any other offer must be accepted within a reasonable time or the underwriter may limit the time within which acceptance may be made. The underwriter may withdraw the quotation at any time prior to actual acceptance. The same procedure is followed whether the insurance desired relates to hull, freight or cargo and is for a special risk or for contemplated risks to be insured under an open contract.

The Policy.—The policy which is issued by the underwriter as the formal evidence of the contract is one of the quaintest documents extant. For over three hundred years the basic or skeleton form of this contract has changed but little. Additions have been made, it is true, but these to the lay mind have tended rather to confuse than to clarify its meaning. The present Lloyd's form differs little from the copy of the "Tiger" policy issued in 1613 found in the Bodleian Library at Oxford and the forms used in the United States are merely adaptations of Lloyd's policy modified to meet American law and practice. The form of expression is that of an age long since past and the enumeration of the perils insured against is evidence that they were added one by one as occasion demanded. They follow each other in no logical order, war and marine perils appearing in indiscriminate sequence. Much as the form has been amended by the addition of modifying clauses, no one has attempted to change the basic wording of the form. It may be said without undue violence to the truth, that every word in the basic form has been weighed in the judicial balance and its meaning determined. Quaint as the document is, there is no doubt as to its meaning, and any material change might greatly weaken its force.

Rules for Construction.—The great body of laws, customs and decisions which has been gathered round this basic form of policy give evidence and definition of the principles and practice of marine insurance. No clause should be added to the form nor should any deletion be made until careful thought has been given to the effect of the addition or subtraction on the remainder of the contract, in the light of these principles and practices. A considerable body of rules for the construction of the policy has developed, some of which are applicable to the interpretation

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of all contracts, while others apply specially to marine insurance contracts. A more extended consideration of these rules will be helpful to a clear understanding of the policy itself.

Usage.—When it is recalled that the law relating to marine insurance is largely an acceptance and adaptation of the customs of merchants it is not strange that usage controls to a great extent the meaning of marine policies. The parties concerned may of course so draw the contract that its obvious import is to override and overrule the ordinary usage in connection with similar transactions, and so far as such contracts do not conflict with the law they are perfectly proper and will be enforced as written. That is to say, usage is only brought into evidence where it is required to give proper meaning and force to the contract.

Mercantile Customs.—Owing to the fact that custom plays such an important part in mercantile transactions and especially in marine insurance contracts it is necessary in many cases to go outside of the contract itself in order to determine the intention of the parties. It would be manifestly inpracticable to incorporate into each policy the customs and usages of the particular trade to which the insurance relates and in the absence of affirmative evidence indicating that the voyage was to be conducted in some particular way, it will be presumed that the usual course and customs of the trade are to be followed. This does not mean, however, that extrinsic evidence is to be read into a marine policy to show that the intent of the parties was different from the fair meaning of the words used. It does mean that a short phrase describing a voyage for instance as a trading voyage to West Africa carries with it liberty to touch and stay for the purposes of ordinary trading at the usual trading stations along the West African Coast.

Printed, Written and Stamped Words.—All policies consist in part of printed and in part of written or stamped words. The printed part expresses that which is common to all marine policies. The written or stamped portions set forth those facts and agreements peculiar to the particular policy. It therefore is presumed that the written or stamped portion was the subject of special consideration by the parties and when in conflict with the printed words, overrules or controls them. It is these written or stamped words and clauses which give rise to most of

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the disputes in regard to the interpretation of policies. The meaning of the printed form is well known, but who can know what will be the effect of some ill considered clause which is demanded by an assured because he thinks it gives him increased protection. It may be so worded as to invalidate some of the printed or implied terms of all marine policies and leave him with less protection than he would have had with a policy in the usual form.

The Intention of the Parties. Technical Words.—The intention of the parties to the contract should govern the meaning of the contract. This intention must be determined from the words as expressed. The words used may permit of more than one interpretation and it must be determined from the intention of the parties which of the several meanings was the one intended. Policies cannot be construed contrary to the fair meaning of the words and expression used, but if it can be clearly established that the words and expressions used do not embody the intention of the parties, the contract may be reformed so as to express such intention. The meaning of technical or peculiar words is presumed to be the interpretation which those words have acquired by usage in similar commercial transactions.

Extrinsic Evidence.—The question is often raised whether or not oral or written negotiations entered into before the formal written contract was executed, shall in any way be read into the contract to explain the intention of the parties. The common rule and the only safe one to follow is that all negotiations prior to the issuance of the formal contract are waived and the policy as written and accepted by the assured stands as the embodiment of all the terms and conditions of the contract. It is, however, possible by reference, definite and descriptive, to make the policy subject to some extrinsic document containing material facts in connection with the risk. Such references are scrutinized with the greatest care and are admitted as evidence only where it is clearly the intention of both parties, that this parol evidence be admitted. Oral evidence is never admitted to vary the terms of a contract, but in some cases it may be received to explain the meaning of the words used.

Does the Application Control the Policy?—The basis of the policy as already explained is the insurance application signed

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or initialed by both parties. The question naturally arises whether or not this application in any way controls the formal policy when issued. In the ordinary transaction an application is made on a form furnished by the underwriter, containing in part the printed clauses appearing on the policy, and in such a case the only conflict between policy and application would be a mistake in transferring the information on the application to the policy. Underwriters are usually prompt in correcting such errors, and if they should object would be judicially compelled to make the correction. If, however, the application has been bound on a form prepared by the assured containing strange or unusual clauses, but the policy when issued is on the underwriter's customary form, then it is more difficult to determine whether or not the application can be read in to change the terms of the policy. As a matter of equity it seems fair that an underwriter should be bound by the application which he signed; as a matter of pure law the question is doubtful. A court of equity would probably decree that the policy be changed to conform to the terms of the application, unless the underwriters could show that their attention was not directed to these strange and unusual clauses and that they had not noticed them. In such case it might be decreed that the minds of the parties had not met and that there was no valid contract.

The Law of the Place.—It is a general rule of the law of contracts that an agreement is held to be made in accordance with the laws of the place where the contract is drawn up and is to be interpreted in conformity with such laws. This rule becomes important in the consideration of contracts made in one state or country but to be executed in another. It has been held by the Supreme Court of the United States that an insurance company can make contracts by mail and that such contracts are not amenable to the law of the State where the contract is to be executed. Several of the states have endeavored to bring such insurance contracts under their control for purposes of taxation, but the law would seem to be clear in this respect. This question often arises in connection with certificates issued under contracts of insurance, which certificates are not valid unless countersigned by the assured who is domiciled in another state. If the issuance of such certificate is the actual making of the con-

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tract it would seem clear that the contract is subject to the laws of the state where the certificate is countersigned. Where, however, the countersignature of the certificate in no sense is the making of a contract, but is merely the validation of formal evidence of a contract already made, *i.e.*, the open policy, it seems equally clear that the laws of the state where the open policy was issued control the contract.

The Cancellation and Modification of Contracts.—Contracts of insurance being entered into by mutual agreement of the parties may be cancelled or modified only by their mutual consent. Such consent should be in writing and may be shown either by having a cancellation clause written across the original application and this clause signed or initialed by both the assured and the underwriter, or a regular form of cancellation (see appendix, page, 372) may be filled out in duplicate by the assured or his broker setting forth the reason for the cancellation and outlining the particulars of the original insurance so that no doubt may exist as to the insurance to which the request for cancellation refers. One copy of the cancellation notice is signed by the assured and retained by the underwriter and the other is signed by the underwriter and retained by the assured. If the policy has been issued, it is surrendered to the underwriter who then makes the necessary cancellation on his records. In some instances the cancellation clause may be written across the face of the policy, both parties signing it, although the policy itself is only signed by the underwriter. Alterations in the contract are similarly made. No writing on the policy other than such as is assented to and initialed by the underwriter is of any force or effect as against the underwriter, although it may result in voiding the contract with respect to the rights of the assured. When a contract has been made, but has not become operative, the assured may by preventing the commencement of the risk, in effect dissolve the contract. In no other way can the assured without the consent of the underwriter release himself from his bargain. The underwriter on the other hand may prevent such a result by requiring the assured to agree that there shall be no return premium for cancellation or short interest. Such an agreement is justifiable because the underwriter by accepting insurance by a named vessel for one

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merchant restricts by that amount his underwriting capacity available for others.

The Assignment of Policies. Certificates.—The subject of the assignment of policies is one that is not altogether free from doubt. It is a general rule of law that a contract that does not involve the question of the parties themselves may be assigned, the assignee taking the place of the assignor with respect to the benefits and obligations of the contract. The decisions in regard to the assignment of policies are not all in agreement, but as a matter of principle, aside from the question of law, it does not seem just that an underwriter contracting with one person, should be forced without his consent into contractual relations with another. Of course, if the contract reads for account of "whom it may concern" as so many insurance policies do, there may be room for doubt as to the assignability of the policy, but even in this case if the assured is divested of his interest or his relation to the insured subject, there would seem to be considerable doubt as to whether the contract should inure to the benefit of a third party. It is quite usual to avoid such question arising, to have inserted in policies, a clause making an assignment void unless assented to by the underwriter. However, even in the absence of such stipulation, it is prudent to have the underwriter assent to the assignment. Obviously, if loss is made payable to the assured or order, the underwriter agrees in advance to the payment of a loss to some undisclosed person, but nevertheless, it would seem that at the time of the loss the assured must have had an insurable interest in the property. Insurance certificates, are issued for the purpose of transferring insurance and are quasi-negotiable. The insurance being transferred by endorsement, the holder of the certificate receives all the rights of the original assured, but also assumes all liabilities that may have attached to the insurance, as for example liability for unpaid premiums. Even this liability is waived in many cases by underwriters who stipulate in the certificate, that with respect to a third party holder of the certificate all liability for unpaid premium is waived.

Clarity Essential in the Writing of Policies.—The only safe rule to follow in the writing of insurance contracts is to have the facts in relation to the insurance so clearly set forth in the policy,

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that it is not necessary to have recourse to the rules of construction for explanation. Inconsistencies should be reconciled and ambiguities clarified at the time of issuing the contract so that in the event of loss the only necessary acts to be performed will be the presentation of the proofs of loss, the adjustment of the claim and the drawing of the check in payment thereof.

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CHAPTER 6

THE POLICY. ASSURER AND ASSURED

Types of Policies.—There are many types of policies in use in the insurance of marine and transportation risks. These various forms differ widely in much of their phraseology, yet all are merely the outgrowth and development of the original form of marine policy which has been in use for centuries. This fact will readily appear from an examination of the various types of policies in each of which will be found phrases and clauses common to all. Among the various types of policies in use are those insuring cargoes both as individual risks, known as special policies, and under open contracts called floating policies. Special types of cargo policies are in use for the insurance of certain commodities such as cotton, grain or refrigerated products. Other types of cargo policies are seen in the blanket and transit floater policies which are in general use in connection with coastwise and inland marine insurance. The insurance of vessels, hull insurance as it is known, has developed various types of policies. Some of these are general in their application being used for all kinds of hull risks, while others are limited in their scope. Thus general steamer forms, and those adapted to special trades as Great Lakes or River traffic are found, while in the insurance of sailing vessels, forms are provided for vessels depending for power on their sails alone and those equipped with auxiliary engines. Vessel forms are also in use for the insurance of port risks and for the insurance of vessels while being built or repaired. The insurance of freight, commissions, profits and other special interests requires special clauses which may be embodied in separate forms of policies or these interests may be insured under cargo forms containing modifying clauses. There are also liability forms issued to the common carriers under which the insurable interest is not cargo, but the liability, either implied by law or assumed by contract, of the carriers for cargo in their custody.

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Form of Policy.—There is, in the United States, no standard form of policy required by law for use in connection with the issuance of marine insurance contracts. Each company, however, has its own skeleton forms, differing from one another in regard to some words or expressions, but all essentially alike and closely following the forms of expression which have stood the test of time and have received judicial interpretation. The mere fact, however, that the skeleton forms of the various companies do differ, makes it necessary for the assured or his broker to have a thorough knowledge of the different forms in use, so that in accepting many policies of different companies, each covering part of the same risk, no conflict may exist between the several policies in the printed, written or stamped portions. The form of policy used as the basis of this explanation is the special cargo skeleton form in use by one of the New York companies, and is chosen because it has changed but little in the past seventy-five years and furnishes a good basis for the discussion of the underlying conditions of all marine insurance. The cargo form is taken because it is more used than the hull form, but the basic parts of policies used for hull, cargo and freight are alike. The modifications necessary for the insurance of these different interests will be discussed in their proper places.

British Form of Policy.—The relations existing between the American and British marine insurance markets being so close, attention will be called from time to time to the salient differences between American and British policies. As already indicated the British marine insurance law has been codified, and in the Marine Insurance Act, 1906, is set forth in considerable detail the rules under which marine insurance is written in Great Britain. No definite form of policy is required by the Act, but following it there is set forth the common Lloyd's form of policy with rules for its construction and this is the form in general use in Great Britain. (See Appendix p. 411.)

The Assurer.—Naturally the first item in the policy is the name of the Insurance Company, the party of the first part to the contract. Underwriting in the United States, as already indicated, is conducted almost exclusively by incorporated companies, acting through their duly elected officers or their appointed agents. Individual underwriting has fallen into disuse.

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By Insurance Company. [No.]

ON ACCOUNT OF

In case of loss to be paid in funds current in the United States, or in the City of New York to

Do make Insurance and cause to be insured, lost or not lost, at and from

upon all kinds of lawful goods and merchandises, laden or to be laden on board the good.....called the..... whereof is master for this present voyage. or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, at as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at as aforesaid. AND it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises, hereby insured, are valued (premium included) at

Touching the adventures and perils which the said Insurance Company is contended to bear, and takes upon itself in this voyage, they are of the *seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints and detainments of all kings, princes or people, of what nation, condition or quality soever, barratry of the master and mariners*, and all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, factors, servants and assigns, to sue, labor, and travel for, in and about the defence, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster be considered a waiver or an acceptance of an abandonment; to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of

Sum Insured.
$

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said (the amount of the Note given for the premium, if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid, unless amounting to *five per cent.* PROVIDED ALWAYS, and it is hereby further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said

if there be one at the place such proofs are taken.

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INSURANCE COMPANY shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said INSURANCE COMPANY shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. AND in case of any insurance upon the said premises, subsequent in day of date to this policy, the said INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said INSURANCE COMPANY shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance. IT IS ALSO AGREED, that the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

In witness whereof, the President or Vice-President of the said **Insurance Company** hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in **New-York,** the day of one thousand nine hundred and

Memorandum. It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware and willow, (manufactured or otherwise), salt, grain of all kinds, tobacco, indian meal, fruits, (whether preserved or otherwise), cheese, dry fish, hay, vegetables and roots, rags, hempen yarn, bags, cotton bagging and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under *twenty per cent.* unless general; and sugar, flax, flax-seed and bread, are warrnated by the assured free from average under *seven per cent.* unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under *ten per cent.*, unless general.

Warranted by the insured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be noreturn of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, *one-half per cent.*, upon the sum insured, is to be retained by the assurers.

Premium

$

Proof of loss to be authenticated by the Agent of the Company,

Secretary. **President.**

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Our nearest approach to this system is found in the very few Lloyd's Associations, where individual underwriters severally underwrite a portion of the total line covered by a policy issued by their joint attorney. Even this modified form of individual underwriting is disappearing, regularly incorporated companies succeeding the groups of individual assurers. The underwriting scope of a corporation is strictly limited by its charter, but ordinarily a company's activities are not confined to any one branch of insurance. Power is granted to them to do fire as well as marine insurance, and some companies have even a more general charter. In New York State, at least, the companies in regard to their marine business, are not limited with respect to the amount which they may carry on any one risk, but prudence naturally sets limits which ordinarily are much less than the legal restrictions in regard to fire and other forms of insurance.

The Assured.—The name of the Assured follows the name of the Company. It should not be inferred that the person, firm or corporation named as the assured is necessarily the real party at interest, as insurance may be taken out in the name of an agent. However, a policy must be taken out in the name of a person, firm or corporation who directly or indirectly has an insurable interest. One who has such a vested, expected or contingent interest in the subject matter that he will be benefited by its preservation or injured by its loss or damage has an insurable interest in that property. Only those interested in the subject matter at the commencement of the risk under the policy can be original parties to the policy and they continue to be parties only while they have an interest. The appointment of one person as the agent of another for the placing of insurance gives that person sufficient insurable interest in the property to enable him to effect insurance in his own name as agent. A policy placed by an agent for a principal without the latter's consent, may be ratified and adopted by the principal at any time, even, it would seem after loss is known to have occurred. Insurance placed by agents will, however, be applied only to such principals as were intended at the time the insurance was effected.

Insurable Interest Must be an Actual One.—The insurable interest must be such that the happening of any of the perils

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insured against might directly effect the interest of the assured, rather than have merely a remote or consequential effect. For instance, the loss of a full cargo of grain might disturb the grain market, yet this fact would not give an insurable interest in the grain at risk to any except those who would be directly effected by the loss of that particular grain. This does not mean that one whose relation to the subject matter is conditional, does not have insurable interest, for an interest which is real and exists when the insurance is applied for but may be defeated by the happening of some contingency is insurable. Such an interest, however, should be definitely described. Several different persons may have insurable interests in the same subject matter, each having a different interest, not conflicting with the interests of the others. However, a mere expectant interest in the subject matter, not founded on any legal right or title does not give a person such an insurable interest in property as may be covered by a policy of insurance.

Extent of the Insurable Interest.—The insurable interest need not exist at the time the insurance contract is made. Merchants make contracts to automatically cover their future transactions, but it is essential to a recovery under the policy that the assured have an insurable interest at the time of the loss. While it has been stated that an insurance policy insures the person and not the thing, the policy only protects the person with respect to his pecuniary interest in the thing itself. Without the existence of the thing and without a definite relation existing between the person and the thing no insurable interest exists. It is not necessary that the assured be interested to the extent of the whole value of the subject matter. Any interest, however slight, if definite and legal may be insured, as for instance the commissions which a commission merchant will earn if the goods arrive safely so that he can attend to their distribution. The number of insurable interests which exist with respect to the same subject matter may be numerous, but the sum total of all the insurance on these various interests should not exceed the total pecuniary value of the property itself or the value contingent upon its continued existence. This sum should be the total amount recoverable in the event of the destruction of the subject matter of these various insurances. It should never be possible for

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two parties each to collect the value of the destroyed property. It is, therefore, necessary that the policies covering different interests do not overlap, otherwise double insurance will exist.

Persons Who Have Insurable Interests.—Among the many classes of persons who may have an insurance interest in property, and who may therefore effect insurance in their own names, or those upon whose behalf valid insurance may be written in the name of a duly authorized agent, the following may be mentioned, *i.e.*

Owners.—It is self-evident that he in whom the legal title is vested may insure the property.

Managing Owners.—In many cases the ownership of sailing vessels and steamers is divided into sixty-four or it may be two hundred and fifty-six or some other number of shares. The individual owners may have no voice at all in the management of the vessel, but one of the part owners is intrusted by the others with the conduct of the property. To avoid detail, this managing owner, as he is called, may be charged with the duty of insuring the vessel and takes insurance in his own name for account of whom it may concern, an expression which will be presently explained, but in this particular case referring to himself and his co-owners.

Mortgagee.—Commercial transactions are conducted largely on credit, and vessels, like other forms of wealth, are often mortgaged for a considerable part of their value. The lender of money either on cargo or vessel has an insurable interest in the property to the amount of his loan, but may effect insurance for the full value for the benefit of all concerned.

Consignee.—Goods are often shipped on consignment for sale, the property being at the risk of the consignee, the latter paying for the property not a fixed sum determined by an invoice but a definite percentage of the proceeds. In such cases the consignee has an insurable interest to the extent of the full value of the goods.

Factor or Commission Merchant.—Such persons have an insurable interest to the extent of their expected profits or commissions, if these be dependent on the continued existence and safety of the property.

Trustee for Creditors.—The owner of property may become bankrupt or may make an assignment for the benefit of creditors, in which case the trustee in bankruptcy or the assignee obtains an insurable interest for the benefit of all concerned.

Agent.—An agent, provided his authority is broad enough, always has such an insurable interest that he can take insurance in his own name, but the policy should set forth the agency.

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Charterer.—A vessel may be chartered under an agreement that the charterer assumes full responsibility for the vessel, as in the case of a "bare ship charter." In such case the charterer has an insurable interest and may insure in his own name. The charterer always has an insurable interest in the earnings of the vessel, depending of course on the terms of the charter. The charterer also has an insurable interest on the "profits on charter" being the difference between the hire he pays for the use of the vessel and the amount he will earn by the carriage of goods under bill of lading.

Repair Yard.—When a vessel is sent to a yard for repairs, the contractor may assume responsibility for certain perils which may overtake the vessel while under his control. He therefore has an insurable interest in the vessel with respect to these perils.

Common Carrier.—A common carrier transporting property is responsible under the law for the safe delivery of the goods to the consignee, except in so far as it may be relieved of this responsibility by law, as in the case of the "Harter Act," with respect to ocean commerce. For an increased rate a carrier may agree to assume liability for loss caused by risks for which he is not legally responsible or he may agree, upon the order of the shipper or consignee, to procure insurance on the property while in transit over his lines or those of connecting carriers. A carrier therefore by virtue of his legal responsibility or his assumed responsibility has a valid insurable interest in the property in his custody.

Bottomry and Respondentia.—The lender under a bottomry or respondentia bond has an insurable interest in the property to the extent of his loan, since in the event of the loss of the property the debtor will be discharged from his obligation to repay the loan.

The borrower under a bottomry or respondentia bond also has an insurable interest, but only for the amount by which the value of the property exceeds the amount borrowed, since in the event of loss he will not suffer with respect to the amount borrowed, this loss falling on the lender. If, however, the bond provides that the borrower shall be discharged from his debt only in the event of loss caused by certain specified perils, he has an insurable interest to the full value of the property against all other perils.

Bottomry and Respondentia loans are very rare in modern practice and are confined to loans made at a port of refuge to pay for disbursements made to enable the vessel to continue her voyage. The loan is made to the master of the vessel on the security of the vessel or the cargo or both, and does not as a practical matter affect the insurable interest of the hull or cargo owner.

Reinsurance.—An underwriter having assumed the risks to which

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the assured's property is subject, has a valid insurable interest in such property, and may reduce his liability by reinsuring the whole or any part of it against all or part of the risks for which he has assumed liability. The original assured, however, has no right to or interest in such reinsurance.

"For Account of."—No part of the marine insurance policy is more important or requires greater care in its wording than does the phrase following the name of the assured and reading "for account of." In this blank space should be inserted by name or by description all the parties who are interested in the insured subject. In the case of individual or special insurance the problem is often very simple as the assured may desire the protection to be merely for account of himself, no third party or parties being interested in the transaction. Where, however, an open contract is desired which will cover all property which may be received by a merchant the most careful wording is necessary in order to make the contract cover all the property in which the merchant, as owner, or as consignee with orders to insure, is interested, or for which he may be directly or indirectly responsible. It is equally important that the policy be not made "a catch all" apparently covering property to which the relation of the assured is not clearly defined. It often happens that a merchant will wish to cover under an open or floating policy only a portion of the merchandise which may be shipped to him, or only such goods as may be shipped under special conditions, as for instance merchandise purchased under letters of credit issued by a named bank. In such circumstances it is necessary that the floating policy be so worded as to provide for nothing but the shipments on which insurance is desired. A considerable degree of skill is required to so word this portion of the policy that dispute will not arise in determining whether the assured is entitled to receive reimbursement for a loss which may have occurred, or whether the underwriter is entitled to premium on risks which the assured has failed to declare.

Attachment of Policy.—As the question of the passing of title is often one of considerable importance and may be difficult of proof, it is, in many cases, prudent to insert at this point in the policy, a definite description of the time at which the policy will attach. For instance, in the raw sugar trade the policy may be

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made to attach when the sugar is bagged and set aside for the assured, while in the raw cotton trade it may be made to attach "from the moment the cotton becomes the property of the assured or legally at their risk, provided, however, that no cotton shall be covered hereunder prior to actual delivery to the assured or their agents, unless specifically identified by marks and numbers or other designation in possession of the assured or mailed to the assured prior to loss."

Description of Insurable Interest Should be Definite.—If the assured wishes to cover property of others which he may be ordered to insure, provision should be made that such orders be in writing and mailed to the assured prior to the time the shipment is made. Underwriters, by insisting on a careful description of the interested parties and of the time at which the goods are to come under the protection of the policy, are not endeavoring to insert technicalities of which they can avail themselves to avoid payment of loss. They are merely trying to so word their policies that there may be no question of the risks for which they are liable to the assured and of the premiums for which the assured are liable to the underwriters. Too often the assured, perhaps through an honest mistake, has failed to declare risks to underwriters and to pay premiums thereon, but in the event of loss on a similar risk he has made a claim under the policy and insisted on payment of the loss. In such cases, of course, payment of the premium on the unreported risks can be claimed by the underwriter, but where a loss does not reveal the mistake or omission the underwriter suffers. It is only by the continuous flow of premium to the underwriter that he can respond for losses, and policies should be so clearly drawn that no doubt can exist in the mind of either the assured or the underwriter of their respective duties and liabilities.

An Insurable Interest Must Exist.—There is another problem in connection with the description of the assured which cannot be ignored in view of the revelations of unfair dealing in the procurement of marine insurance policies which are still fresh in the public mind. It formerly was possible in New York State, at least, for a broker or ship agent to contract for large amounts of insurance on cargo by a named vessel when the so-called assured had no property at risk, and had no intention of shipping

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goods by the vessel in question. Having obtained advance information that a certain steamer was to load for a port for which freight space was in great demand, this broker or ship agent would enter the marine market and bind at low rates all the available underwriting capacity. When the vessel arrived and began to load her cargo the legitimate shipper would discover that the market was "full," as it is known, by this vessel. The broker who had bought up the market would then approach the shipper offering to transfer insurance to him at a rate greatly in advance of the original rate charged by the underwriter. Such practices were obviously unfair and could have been prevented in large measure had underwriters insisted on having insurance placed only in the names of legitimate shippers who had definite freight engagements for the vessel named. The law of New York has since been amended making it unlawful to issue insurance to anyone who does not have a valid insurable interest and also making it unlawful for anyone who does not have a valid insurable interest to apply for insurance. It also becomes unlawful to transfer insurance at a rate higher than its original cost unless the buyer is informed of the original rate and consents to pay the higher charge. While this law has done much to correct the improper practices which have crept into the marine insurance business in New York it does not correct similar abuses which may be practised in other states. Underwriters by issuing policies to only those whom they know to be legitimate shippers or authorized brokers can most effectually stamp out these improper practices. In Great Britain underwriters have been imposed upon in the same way and now insist that the names of the real parties in interest be declared when insurances are made binding. The wording of the Lloyd's policy (see appendix, p. 411) is so indefinite and comprehensive with respect to the persons insured that underwriters have readily been imposed upon by those who sought unlawfully to "corner the insurance market."

Whom It May Concern.—Before passing from the subject of the assured, reference must be made to an expression common to most marine policies which leads to some confusion in determining the actual parties at interest. This expression "for account of whom it may concern" is somewhat peculiar to American

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policies but similar expressions are found in English and Continental insurance contracts. The original purpose of these expressions is doubtful, but as Emerigon, the French author, suggests they may have been introduced in order to conceal the identity of the real party at interest and to keep his commercial enterprises secret. However, their use caused English underwriters in the eighteenth century to complain "that policies were so loose that an underwriter had no opportunity of knowing who the persons were for whom he insured." A statute accordingly was passed setting forth how the assured should be described in the policy, and an underwriter promptly took advantage of the law in declining payment under a policy issued in the name of an agent who was not described as such. Other similar cases occurred and a new statute was enacted virtually repealing the former. The use of these expressions is now firmly established and their meaning is well understood.

"Whom It may Concern" is not All Inclusive.—The expression "for account of whom it may concern" has not the all-inclusive meaning the words would indicate. Phillips states that a policy written with these words or "any equivalent clause, will be applied to the interest of the party or parties, and only the party or parties, for whom it is intended by the person who effects or orders it, if such party has authorized its being made beforehand, or subsequently adopts it."[1] The use of this expression, which is a technical one, presupposes an agency, and refers to only the person or persons whom the agent had in contemplation when he effected the insurance. Such person or persons are the "concerned" in the transaction, and not all persons who might possibly have an interest in the subject matter of the insurance. It is not essential that these parties be definitely known to the assured, but they must be embraced within a certain class of persons for whose account the assured intended to effect insurance.

"Trading with the Enemy."—The entrance of this country into the World War and the passing of the "Trading with the Enemy" act presented a new problem with respect to this expression. It might happen that some of the persons intended to be included by the assured under the general words "whom it may concern" were alien enemies of the government, or persons who were in-

[1] Phillips on "The Law of Insurance," Section 383.

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cluded within the terms of the Act and who were, or should have been placed on the proscribed list by the United States Government. It is doubtful whether or not the government would hold an insurance company responsible for innocently granting insurance under the cover of "whom it may concern" to persons coming within the terms of such an act. Underwriters during the late war in order to preclude such a possibility, and to affirmatively show that it was their intention to observe the letter as well as the spirit of the law inserted in their policies clauses which had the effect of excluding from the protection of the policy any person or persons who might come within the meaning of the Act. One form of this clause, which it will be observed also included the restrictive trading acts of Great Britain, read:

"Warranted not to cover the interest of any partnership, corporation, association or person, insurance for whose account would be contrary to the Trading with the Enemy acts or other statutes or prohibitions of the United States and/or British Governments."

The Payee of Loss.—In the policy form under consideration the wording continues: "In case of loss, to be paid in funds current in the United States, or in the city of New York to ————————." Ordinarily a policy is made payable to the assured or order, but loss may be made payable to any interested third party or parties. On shipments which are financed under letters of credit it is customary to have the loss made payable to the issuing bank in order that its advances on the shipment may be protected. In the case of hull insurance where there is a mortgage the loss is usually made payable to the mortgagee and the assured "as their respective interests may appear." The expression "as their interests may appear," while in general use, is technically objectionable in that it may put on the underwriter the burden of deciding what the respective interests of the parties are. However, in case of a dispute it would be possible for the underwriter to pay into court the amount of the loss, and permit the claimants to settle their differences there. It must of course be remembered that in order to establish a valid claim for loss certain documentary evidence must be presented showing that such loss has actually occurred

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and that the claimant is entitled to payment of the amount due under the policy. These proofs of loss will be considered in a later chapter.

The Insurance Certificate Transfers the Payment of Loss.—In the last twenty-five years the insurance certificate has largely supplanted the policy in connection with the negotiation of documents relating to cargo shipments. The use of this certificate has already been explained, but its consideration at this point is pertinent, since its purpose is primarily to transfer to the holder the benefit of the insurance which, in the event of loss, is the right to claim the indemnity which the insurance provides. As most merchants have open policies covering all shipments which are at their risk, the insurance certificate provides a simple and convenient method of evidencing the insurance and of making possible the payment of loss to the bona-fide holder of the commercial documents. These certificates, when negotiable, provide that loss shall be payable to a designated person or order, these last two words enabling the payee by simply signing his name across the back of the certificate to transfer the payment of loss. This he may do in one of two ways, either he may specially transfer the certificate by endorsing it "Pay to the order of ————————" inserting some definite name, or the payee may by merely signing his name make the instrument a so-called "bearer" document. In the first case loss will be payable only to the person indicated or one to whom he may order the loss payable, in the second case any person producing the certificate with the supporting documentary evidence of ownership and loss would be entitled to payment. By the omission of the words "or order" or "to the order of" the endorser can destroy the negotiability of the document, it being transferable from that time on, only by assignment.

Loss may be Made Payable in Foreign Countries.—The custom of providing that loss may be payable in foreign countries, while essential in the conduct of commerce, is not a new departure as this method was in vogue at least as early as the sixteenth century. Underwriters carry funds in the larger banking centers and have arrangements in smaller cities by which drafts drawn on them are honored by some local bank. This enables the holders of certificates after proper adjustment has

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been made by the local representative of the underwriters to receive prompt payment and thus to be put in funds to continue their commercial transactions. Were it necessary in each case to return the certificate and other loss papers to the underwriter for payment, often months would elapse before the holder of the certificate could, in the ordinary course of the mail, receive reimbursement for his loss.

Loss Orders.—After a loss has been adjusted and the underwriter has admitted liability, the payee specified in the policy or the payee under the certificate if one has been issued, may by a written order in proper form instruct the underwriter to pay the loss to some third party. Such orders are principally used in connection with policies in which the loss is payable to a bank to protect its advances on the shipment, and these advances having been paid by the assured, the bank is out of the transaction and quite willing that the loss should be paid to the assured. To accomplish this end a formal order of payment is executed by the bank.

Open or Floating Policies.—It may be well at this point to give consideration to the subject of open or floating policies. The word open in connection with marine insurance contracts has a double meaning. Sometimes it is used to describe the insurance on a specific risk where the exact amount needed has not been determined and the transaction is, therefore, an open or uncompleted agreement. A broader meaning, which, however, is merely an enlargement of the primary definition, is given to the term when used in connection with floating policies. These policies are contracts which may be issued for a definite or indefinite period of time, there being no restriction in New York as to the duration of a marine policy and cover the assured with respect to all his shipments as described in the policy within the named geographical limits. Amounts applicable to the contract are to be reported from time to time as information of shipments is received, and therefore are open. Such policies usually have a limit of liability on any one risk, but the actual amounts on which premium is to be paid while undetermined, are definitely controlled by the limit of liability and by the valuation clause to which reference will be made later. The open or floating policies, covering as they do all goods as described which may be afloat,

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make possible the great commercial transactions of the present day. Were it necessary to specially insure in advance each individual shipment, commerce on its present gigantic scale would be impossible since in many cases goods are shipped and may even have arrived before the assured has knowledge that property at his risk has been exposed to the perils of transportation.

Blanket Policies.—However, the distinction cannot be too closely drawn between policies of this character and the so-called blanket policies which are similar in their nature, but entirely different in their mode of operation. The purpose of the blanket policy is similar to that of the floating policy but is a closed instead of an open contract. The blanket policy describes the geographical and time limits of the contract, the payee of loss and the kind of goods to be insured and always has a fixed limit of liability on any one vessel or in any one location at one time. The principal distinction, between the floating policy and the blanket policy is that in the former type of contract the assured pays the premium on the actual amounts at risk, while under the latter form a lump sum premium is charged. This premium is based on the estimated total amount which will come under the protection of the policy during the contract term, and may be subject to readjustment at the end of the term, by the payment of an additional premium at a fixed rate if the books of the assured indicate that an amount greater than that estimated came under the protection of the policy. By the same terms of agreement a return premium may be made at a fixed rate if the actual amount at risk fell below the estimated amount. Usually these policies contain a provision that if loss is paid the policy must be reinstated for the amount of the loss, by the payment pro-rata of the annual premium on the amount so paid for the unexpired period of the policy. This reinstatement clause may make such policies very costly if an assured unfortunately has a series of losses.

Advantages of Blanket Policies.—From his point of view a blanket policy properly worded has the advantage of securing to the underwriter the premium for the risks which he assumes. Too often, in the case of floating policies the assured forgets to report shipments applicable to the policy, or has the mistaken

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notion that it is only necessary to report shipments on which loss has actually occurred, forgetting that the underwriter is entitled to premium on every dollar which has been at risk under the policy. Under the blanket form the assured avoids the necessity of making these detailed reports of shipments applicable to the policy.

Transit Floaters.—Blanket policies under the name of "transit floaters" are in common use to cover local shipments made by merchants where it would be impracticable to make specific reports of the individual items. These policies are also frequently used by "common carriers" to protect shipments moving over their lines. Policies in which the interest insured is the liability of a common carrier for loss suffered to property in his custody are sometimes issued. The subject of insurance is not the property itself but the liability of the carrier whether this be implied by law or assumed by contract. Such a policy is unvalued, the responsibility of the underwriter being limited only by the amount expressed in the policy and not by the value of the property to which the liability relates. The great bulk of cargo insurance, especially in the overseas trade, is written in the form of the open or floating policies or as they are called in Great Britain, "permanent covers." It is worthy of note that the Marine Insurance Act of Great Britain limits the term for which a policy may be written to one year, and that owing to the "Stamp Act" these "permanent covers" are merely agreements on the part of the underwriters to cover the shipments described and to issue properly stamped evidence of the individual insurances when declarations of amounts are made.

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CHAPTER 7

THE POLICY (*Continued.*) THE TERMINI

Lost or Not Lost.—After laying such great stress on the fact that to have a valid insurance there must be an insurable interest, that is a subject matter to which the assured bears such a relation that he will be benefited by its continued existence or injured by its damage or destruction, it is somewhat disconcerting to find the following words in the policy form. 'Do——make insurance, and cause——————————to be insured, lost or not lost." If the subject matter is lost there would seem to be no insurable interest, but it must be remembered that the assured and his underwriters can incorporate into the policy any conditions which are legal. Were the subject matter known to either party to have been lost, a policy issued with respect to it would then be void. There must, therefore, be read into this phrase the words "without the knowledge of either party."

"Lost or Not Lost" a Necessary Condition.—The words "lost or not lost" were first introduced into the policy in 1613 but their use has become so general that they are now found in practically all forms. The reason for the use of this clause is obvious. A merchant ordering goods from a distant place may experience delay in obtaining information as to the shipment. When advices are received the vessel may have sailed and in fact may have been lost. Were the merchant to insure the goods under a policy not containing these words, and the underwriter could establish that at the time the policy was issued the goods were damaged or had ceased to exist, payment of loss could be resisted on the ground that there was no insurable interest to the extent of the damage or loss. Such a situation would be intolerable in mercantile transactions, and over three hundred years ago, when the means of communication between countries were very crude, this provision was first incorporated in the policy form. Of course, these words can be construed only in the

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light of that underlying principle of all marine insurance namely that the utmost good faith must exist between the assured and the underwriter. If the assured knows that disaster has overtaken the vessel or its cargo, the concealment of this knowledge would amount to fraud and the insurance would be void. In the absence of such knowledge, this clause permits the valid insurance of goods or vessel which at the time of insurance may be lost or damaged. It sometimes happens that the merchant or his underwriter may have heard rumors that disaster has overtaken the venture, but by mutual consent the assured warrants that the property was in good safety on a given date and in the event of loss the assured can recover if it can be established that at any time on that particular day the venture was in existence and undamaged. On the other hand it may be known that disaster has overtaken the venture, but the extent of the damage or loss is unknown. The assured, however, wishes the remnant of his property then existing to be insured, and the underwriter who is willing to assume such a risk will insert a warranty of the following tenor, *i.e.*, "Warranted free from loss, damage, injury or expense arising out of casualty of ——" inserting in the blank space the date of the disaster. This makes the underwriter liable for damage caused by a new casualty, but not for that resulting directly or indirectly from the original disaster.

The Termini.—The words "at and from" follow "lost or not lost" in the form, and a blank space is provided in which is inserted the geographical or time limits of the policy. These limits are known as the *termini* of the insurance, the *terminus a quo* being the place or time of the inception of the risk, the *terminus ad quem* the place or time of the termination of the risk. No insurance policy is valid unless these termini are mentioned. The *terminus a quo* must be specifically indicated, the *terminus ad quem* may be subject to determination as in the case of a floating policy wherein the time of the termination of the contract is not stated, because the policy, though being continuous, may be terminated by either party's giving notice of cancellation as provided in the contract. In the case of floating policies, however, the geographical termini are definitely described. In these policies and usually in the case of hull insurances on time, both geographical and time limits appear in the terms of agreement.

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The Subject Matter of Insurance.—The policy continues "upon all kinds of lawful goods and merchandises." The subject matter of the insurance must be distinctly set forth. If the policy is on a specific lot of goods the property should be described by marks and numbers if possible—the number of packages and kind of goods at least should be noted. In floating policies general words are used such as goods, cargo, merchandise, but in the declarations of shipments under the policy a definite description of the kind and quantity of goods is given. In cases where certificates of insurance are issued it is very important that the description of the goods be exact, so that the property covered by the certificate will fit the description of the goods for which the corresponding bill of lading is issued. If the policy covers only a part interest in the insured subject such fact should be noted at this point in the policy, as for instance on one-half interest in 100 Bales Cotton marked "Kite." While the printed words in the policy are general in their meaning and would cover any goods, it is customary to insert in the blank space preceding these words the definite description of the property. The word "lawful" found in the printed form is inserted merely to protect the underwriter from the inclusion, under general words, of property not lawful to be traded in and does not necessarily refer to contraband of war.

Goods Presumed to be Laden under Deck.—It is a well understood and well established rule of marine insurance that goods are presumed to be shipped under deck, that is below the weather deck of the vessel. If the goods are shipped on deck they are not covered by the policy unless special notice of the stowage is given to the underwriter and he accepts the enhanced risk. The reason for this presumption is apparent. The deck of a vessel is not designed to carry goods. Its primary function is to make the holds watertight and to protect the cargo laden in the holds. Goods carried on deck are subject to weather damage, sea damage and to the hazard of being washed overboard. Shipowners have no legal right to load goods on deck and if they do so, such goods are at the shipowner's risk unless he has obtained the consent of the cargo owner to such stowage. Accordingly underwriters cannot be expected without special notice to assume

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the risk of goods laden on deck and will be released from their contract if the insured subject is so loaded. There are certain cases, however, which may furnish an exception to this rule. Certain kinds of goods, dangerous in themselves, are by custom and sometimes by law, required to be shipped on deck, so that they will not endanger the other cargo and can, if necessity arises, be quickly thrown overboard. Underwriters are presumed to know of these customs and legal requirements. If, therefore, an underwriter accepts a risk on one of these special commodities and the assured does not specify that the property was shipped on deck, the underwriter might be precluded from urging that the insurance was invalid because the property was laden on deck. Either the custom of carrying such goods on deck or a legal requirement necessitating such stowage would have to be clearly shown, in order to create such a presumption of knowledge on the part of the underwriter. Some insurance companies in order to avoid such possible questions, specifically state in the printed form that the policy does not cover goods carried on deck, but if specially insured on deck are subject to special conditions relieving the underwriter from inevitable losses resulting from such stowage.

Some Kinds of Property Should be Specifically Mentioned.—There are other kinds of property which are not included in the general words goods and merchandises, and among these may be mentioned livestock and goods shipped in refrigerators. Livestock such as horses and cattle must be specially declared to an underwriter, since the special hazards to which such property is subject could not be presumed to be in the contemplation of an underwriter when he accepted insurance on goods and merchandise. The same remarks will apply to shipments of refrigerated and frozen goods such as meats, poultry, fish and game. When marine insurance was first devised and when the printed form of policy was first adopted, the modern method of preserving perishable articles by refrigeration was unknown. Question has also been raised as to whether or not specie, bullion and securities and like articles come within the scope of the general words. The surest rule to follow is to specifically describe the property to be insured so that no doubt of the intention of the parties may exist. If the insurance is on hull, profits,

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commissions, or freight the interest to be insured and the subject matter to which it refers should be adequately described.

The Vessel and Its Master.—The printed form of policy continues:

"laden or to be laden on board the good ..... called the .....whereof is master for the present voyage ..... or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called."

These are quaint words referring to matters which are of vital importance to the risk, but some of the blank spaces are rarely filled in when the policy is issued. The name of the carrying vessel is of course mentioned, but while it has been pointed out that much depends on the experience and skill of the master it seldom happens that his name appears in the space provided. The words "laden or to be laden" do not refer to the attachment of the risk but are descriptive of "lawful goods and merchandises" which are "laden or to be laden on the good ship Atlas" for instance. The word good is not a warranty that the vessel is seaworthy, but is merely a descriptive adjective. There is, however, an implied warranty of seaworthiness to which reference will be made (see p. 174). The name of the vessel is of the utmost importance because this is really the crux of the whole insurance. The underwriter's willingness or unwillingness to write the risk is dependent in large part on the suitability of the proposed vessel for the voyage to be run and no other vessel can be substituted without the consent of the underwriter. The name of the vessel may be changed, the master may be changed, but the vessel itself cannot be changed without voiding the insurance. It will be noticed that it is not sufficient to give merely the name of the vessel, a description of her type must be given such as ship, steamer, motor vessel, auxiliary sailing vessel, etc., so that the underwriter may be able to identify the particular vessel intended.

The Attachment of the Risk.—The name of the assured, the payee of loss, the description of the voyage and the name of the vessel having been set forth, the next paragraph of the form tells when the risk attaches and how long it endures. It also intro-

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duces some fine points of interpretation. The first sentence of this paragraph reads:

"Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, at ..... as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at.....as aforesaid."

It should be remembered that a policy of marine insurance is a transit policy and it should cover goods only while in course of transportation and while out of the custody of the owner. It must also be noted that, notwithstanding the provision given above for the attachment of the risk, the policy will be of no effect until the assured has an insurable interest, and while it cannot, under the wording given, attach until the actual loading on board the said vessel, it will not attach then unless the insurable interest exists.

Date of Attachment.—The wording of this form of course refers to cargo insurances insured on special voyages. Hull policies which are in many cases written on time as it is known, attach from the day and hour named in the policy, but if no hour is named the policy will attach from midnight of the day before. It is customary for an hour to be named and to make certain what hour is intended the standard time of some named place is used as "noon Washington Time." Floating policies on cargo are written to attach from a named date. The policy, as a contract "covers all shipments as herein described made on and after" the date indicated, but the insurance on each individual shipment made under the policy, will attach only in accordance with the printed form that is, "immediately following the loading on board" the specific vessel, unless the policy has been so worded as to provide an earlier point of attachment, as under the warehouse to warehouse form to which reference will be made.

The Time of Attachment.—The words "from and immediately following" give the barest form of protection and as the words imply will provide insurance only from the actual loading of the goods. What constitutes actual loading has been a matter of some controversy, but it seems to be a well-settled principle that from the moment the slings of the vessel lift the

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goods clear of the wharf or other place of deposit, the risk attaches. If on the other hand the goods are lifted on to the vessel by the slings of a delivering lighter or by a derrick on the wharf it would seem to be equally clear that there is no loading until the slings have released the goods on the deck or in the hold of the vessel. In case the *terminus a quo* is a port or place where it is customary or in fact necessary that goods be lightered from the shore to the vessel, as is the case at some ports or roadsteads along the West Coast of South America, doubt may arise as to what the word "laden on board" means. It has been held in certain instances that "laden on board" means laden on board the vessel carrying the goods from the shore where the loading conditions have required this mode of transit. Such decisions would seem, however, to read into a policy a risk which may not have been contemplated or desired by the underwriter. If such lighterage risk is to be included, provision therefor should be made, as is done in the ordinary form of craft clause, reading:

"Including risk of craft, raft, and/or lighter to and from the vessel. Each craft, raft, and/or lighter to be deemed a separate insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability."

In England this question is settled, as in the rules of construction accompanying the Marine Insurance Act, it is held that where goods are insured "from the loading thereof" the risk does not attach until such goods are actually on board, and that the insurer is not liable for them while in transit from the shore to the ship.

Insured Until Safely Landed.—As the insurance continues until the goods shall be safely landed at ———— the *terminus ad quem*, the same question arises to determine whether or not delivery into a lighter or other shore vessel constitutes a safe landing. The answer to this question depends on the hydrographic character and the custom of the port and a safe landing will not have been accomplished until the goods have been landed in the customary manner and within a reasonable time after arrival at the port. This of course, means that if the only method of landing merchandise is by lighters or surf boats, the risk will

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continue in such craft until the property is deposited in a safe place on shore. If discharge were made into a floating receiving hulk, and this were the customary place of discharge a safe delivery would have been made. The facts in each particular case will control, though borderline cases will arise where it will be difficult to determine when the risk under the policy ceases.

Warehouse to Warehouse Clause.—Obviously, the protection afforded by the printed form of policy is the minimum. That it leaves many risks uninsured is apparent and it is, therefore, not strange that various clauses have been devised to enlarge its scope. One of the broadest and perhaps the most usual form of protection afforded in the case of cargo insurance is that of the so-called "warehouse to warehouse" clause. This clause does not by any means represent the extreme limit to which underwriters go in the insurance of cargo, since policies are written covering raw materials right from the farm or from the mine or forest. Insurance policies have in some cases been so broadened that they covered agricultural products while growing in the field and wool while it was still on the back of the sheep. Such policies go far beyond the bounds of transit insurance, the "warehouse to warehouse" clause representing practically the utmost limits to which transportation insurance should be extended.

At and From.—Between the restricted protection afforded by the printed form, and the broad coverage granted in the warehouse to warehouse clause, many intermediate forms of insurance are found. The policy reads "at and from" but these words merely indicate that the insurance attaches when the goods are loaded on the vessel at the port and continues there until the vessel sails when the word "from" becomes effective. The words "at and from" can only be construed in connection with the other words of the contract. Under modern insurance practice question is more apt to arise as to the meaning of the words "at and from" in connection with hull insurance written on the voyage basis.

Attachment of Cargo Insurance.—Often policies will be worded to attach when the goods are receipted for by the transportation company, in which case dock insurance is provided. Such pro-

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tection may have a time limit in order to guard the underwriter against a long wharf risk. Likewise at the point of destination the insurance may be continued for a stated period after discharge from the steamer or lighter, or it may cover in custom stores or other places of deposit for definite periods awaiting acceptance by the consignees The granting of such extended shore risks, however, should be closely watched as an underwriter may thus assume risks, which, because of congestion, may greatly exceed his carrying capacity. Clauses of this description may also grant protection much beyond that afforded in the ordinary "warehouse to warehouse" clause. Since under the latter form the risk ceases when the goods are delivered into *any* store or warehouse at destination, whereas the shore insurance on time, if not restricted by modifying words such as "for thirty days unless sooner warehoused," may give the underwriter an extended risk in an undesirable place of storage after transit has ceased.

Risk after Discharge from Vessel.—It is important to observe a distinction in meaning between a policy reading, "including the risk on the wharf after discharge from the steamer for not exceeding ——— days, commencing upon discharge," and one reading "including the risk on the wharf for not exceeding ——— days after commencement of discharge." In the first policy the specific time on the wharf begins to run from the moment each individual package is discharged, a moment in most cases difficult of determination; whereas in the second policy the time begins to run from the moment the vessel begins to discharge or "breaks bulk" as it is known, the time of discharge of the particular goods insured under the policy being of no consequence.

Attachment of Hull Risks on Time.—To determinate the point of attachment on hull insurance presents some peculiar difficulties. If the insurance is written on time, the point of attachment is of course determined. In such cases it is usually presumed that the vessel is in port and in good safety but this is not necessarily so. When single vessel risks are under consideration it should be insisted that the vessel be in port and in good safety at the date of the attachment. This requirement imposes no hardship on the assured, as all hull time policies contain a clause similar in import to the following:

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"Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the underwriters, be held covered at a pro rata monthly premium, to her port of destination."

Thus there would seem to be no sufficient reason in the case of a single vessel risk why the attachment should take place while the vessel is at sea. In the case of fleet insurance a different condition exists. In this case the insurance usually attaches at the same date on all the vessels of a fleet, and naturally some of the vessels will be at sea while others are in port. Custom has established the practice of disregarding the position of the vessels of a fleet at the time of attachment. The question concerning which of two policies should respond for the loss of a vessel, which sailed before the date of attachment of the second policy but was never heard of again, would have to be determined by the circumstances in each particular case.

Attachment of Voyage Risks on Hull.—In the matter of voyage insurance on hulls, the time of attachment is determined by the wording of the policy. If the contract reads "from a port" the risk will attach from the moment the vessel sails or breaks ground as it is technically called, with the intention of proceeding on the insured voyage. If the insurance is written "at and from a port," the time of attachment is more difficult to determine. It would seem to be the fair meaning of the words, and there are decisions which support this view, that the risk attaches when the vessel is at the port and is either in readiness to take cargo for the proposed voyage, or the captain or the vessel's agents have made some preparation looking to the prosecution of the voyage. The mere fact that a vessel is in port with no definite employment or with no preparation being made to fit her for proposed employment, will not cause a policy reading "at and from" to attach. The safest practice is to consider that under a voyage hull policy reading "at and from" the insurance attaches only when the vessel goes on the berth to load. In order that there may be no lapse between voyage policies a clause reading, "this policy not to attach until expiry of previous policies" may be inserted in the contract. It is customary for a voyage policy on hull to terminate twenty-four hours after arrival in good

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safety at the port of destination or as the Lloyd's form of policy reads, "until she hath moored at anchor twenty-four hours in good safety." The intent of either clause is that the risk shall continue not only for twenty-four hours after mere arrival, but a full twenty-four hour period after arrival at the customary anchorage or harbor in the particular port, where the vessel is not exposed to the perils of the voyage.

Policy May Terminate by Breach of Contract.—While the *terminus ad quem* is dependent on the wording of the policy, the assured may terminate the insurance short of its ultimate time or place of expiration by the breach of any of the expressed or implied terms of the contract. The discussion of expressed and implied warranties is reserved for a later chapter but reference to these warranties is necessary at this juncture, because the breach of one of them will vitiate the insurance and thus introduce a new *terminus ad quem*. So the abandonment by the assured of the insured voyage, or the substitution of another voyage will terminate the insurance.

The Doctrine of "No Deviation."—The second sentence of the paragraph of the printed form referring to the inception and duration of the risk reads, "and it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance." No mention has yet been made of the "doctrine of no deviation," that is, the implied condition that there shall be no departure from, or variation of the insured voyage after the risk has attached. Any inexcusable violation of this implied condition will temporarily or permanently terminate the insurance. This being so, the words quoted from the printed form are introduced in order to excuse certain forms of deviation so that the insurance may not be suspended or automatically terminated. The exception to the rule of deviation is of course made as a practical matter, and as an inducement to the captain of a vessel to exercise supreme care in order to effect the safety of the venture. Were such deviation to make void an insurance, the captain might delay making for a port of refuge, in the event of threatening weather, thereby unnecessarily exposing the venture to loss or damage. However, the facts in a given case must show

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the necessity for the deviation, otherwise this clause could be used as a cloak for unlawful acts.

The Conduct of the Voyage.—The implied conditions with respect to deviation require that the voyage be commenced within a reasonable time, that it be pursued over the usual and direct route between the termini and that the vessel be discharged with customary dispatch. If it is a well-established usage of a particular voyage that certain places be used as ports of call, the use of such ports will not be considered a deviation. If the policy provides that the destination shall be ports in a given locality they must be visited in their geographical order, unless there be well-established usage to the contrary. If on the other hand the ports of destination are specifically enumerated in the policy, they must be visited in the order named.

When Does Deviation Occur?—Deviation may occur at any time after the inception of the risk and voids or suspends the insurance from the moment the deviation commences. As a general principle any deviation voids the insurance. Nevertheless a deviation may be held to only suspend the insurance where the deviation is of such short duration or so temporary as to be negligible, as a delay of an hour or a deviation of a mile. The underwriters would, however, be discharged from liability for any loss happening during such temporary deviation.[1] The mere intention to deviate does not void the policy; there must be an overt act putting the intention into operation. Deviation is excusable not only in the cases enumerated in the printed form, but also when the vessel leaves her course in order to save life. It has been held that deviation to save property alone is not excusable, but hull policies ordinarily do permit such deviation The extent of the deviation or the fact that it does not materially enhance the risk is of no moment in deciding whether or not a breach has been committed. The mere fact that a different voyage has been substituted after the commencement of the risk is sufficient. In order to avoid the hardships which the doctrine of deviation imposes on innocent cargo owners, who have no voice in the conduct or management of the vessel, it is customary to insert in cargo policies, the "deviation clause" which holds the assured covered in the event of deviation or change of voyage,

[1] See Phillips, Section 989.

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the assured agreeing to notify the underwriter as soon as knowledge of the deviation is brought to his attention and to pay such additional premium as may be required. It should be observed, however, that this clause ordinarily does not extend protection in the event of the substitution of a different vessel. As deviation in the case of time hull insurance would automatically void the policy for the remainder of the policy term, a deviation clause similar to that in cargo policies is inserted or it is provided that in the event of deviation the underwriters shall not be liable for loss occurring while the vessel is out of the policy limits.

The Valuation.—The final sentence in the paragraph under consideration reads, "The said goods and merchandises hereby insured, are valued (premium included) at ————." In general policies may be divided into two classes, namely, valued and unvalued. Valued policies represent approximately ninety-nine percent of all those written, unvalued policies being rather rare except in the case of carriers liability policies to which reference has been made. The purpose of the valuation clause is to predetermine the worth of the property insured, so that in the event of loss this will not be an open question. Herein is seen one of the principal differences between marine insurance and other forms of indemnity contracts. In fire insurance as a rule policies are not valued, but the policy is written for a definite amount, with the valuation of the subject matter left open and subject to determination after loss has occurred. Also in life or accident insurance the human life is not valued, although in accident insurance we may find that the amount of insurance furnished on weekly earnings may be limited to the earning power of the man. In marine insurance on the other hand, from the earliest times, it has been customary for the underwriter and assured mutually to agree on the value of the insured subject. Having decided on this value or basis of valuation neither party to the contract can raise objection after loss on the ground that the value is too low or too high, unless it should appear that a fraudulent valuation has been imposed on either party.

Determination of Value.—As already pointed out, marine insurance endeavors so far as is humanly possible to give perfect indemnity to the assured. The assured ships goods to a distant port with the reasonable expectation that they will realize a

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certain price, perhaps greatly in excess of their cost to him. To place the goods in this particular market will necessitate the incurring of various expenses, such as freight, insurance premium, packing, cartage, customs charges and agents commissions, so that the value will be a constantly changing one and were it not possible to predetermine a value many intricate questions would arise as to the real value at the time of loss, which might occur at any point on the proposed passage. It is far simpler, and in practice works a fair measure of justice, to fix a reasonable value and adhere to that.

Valued Policies in Marine Insurance Justified.—Perhaps in fire and other branches of insurance, the chief objection to valued policies arises out of the question of moral hazard. A man is in possession and control of his fixed property, and the possibility of obtaining insurance at a determined valuation, might induce him to accomplish the destruction of his property in order to obtain this fixed value from his underwriters. Human nature being what it is, the practice of having open values on fixed property is manifestly sound. On the other hand, valued policies in marine insurance are justified by the fact that the subject matter is moveable property, and in the case of merchandise at least is out of the custody and control of the assured. While the moral hazard is still present, the assured cannot compass the destruction of his property, without collusion on the part of those in custody of the property. In the case of hull insurance in a time of commercial stagnation, when there are more ships than there is employment for them, the valued policy, especially the high valued policy is a real menace to underwriters. The insured subject in such cases is under the control of the assured and an unscrupulous owner may be tempted to destroy an unprofitable vessel in order to obtain the insurance money.

The Basis of Valuation.—In a single risk policy the valuation may be expressed as "valued at sum insured," or "valued at $————." In floating policies, however, it is only possible to have a basis of value, such as "valued at invoice cost plus ten percent plus prepaid or guaranteed freight," or in the case of imported goods "valued at $———— the £ sterling or the franc of invoice;" or a fixed value per unit of measure may be agreed upon. Under this form of policy it happens many times that the

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individual shipments applicable to the floating policy are not known until after the risk has terminated by arrival or by the loss of the vessel. In either case were the basis of valuation not determined endless disputes would arise as to the amount of loss suffered by the assured, or as to the amount of premium to which the underwriter is entitled, since the premium is charged at predetermined rates applied to the insured amounts.

Hull Values.—In the case of hull insurance, the valuation is always expressed in dollars. Owing to the large values involved in the modern cargo or passenger steamer, it is usual to divide the valuation into parts, one applying to the hull, tackle and furniture of the steamer, the other to its machinery. In the case of expensively fitted passenger steamers or of refrigerated vessels, a further separation may be made showing the value of the cabin outfit or the refrigerating plant. No problem is more difficult than that of determining a fair insured value for a vessel nor is any problem more important from the viewpoint of sound and conservative underwriting. The purpose in separating the value of a steamer into parts is to permit of claims for smaller losses being made, the percentage of loss necessary to make a claim being applied to each separate valuation or to the whole value, whichever method is most advantageous to the assured.

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CHAPTER 8

THE POLICY (*Continued*). THE "PERILS" CLAUSE

Perils Insured Against.—The quaintest portion of the marine insurance policy and that part of it which most clearly shows that it is a document that originated many years ago, is the paragraph dealing with the perils insured. These hazards are not listed in any logical order, marine perils and war perils following each other indiscriminately, indicating that this portion of the policy at least was the result of evolution, new perils being added as commerce developed and as new difficulties were encountered by mariners in extending the scope of their commercial activities. Words are used which have become obsolete and leave in doubt the precise form of peril which the early underwriter and merchant had in mind. General words follow the specific enumeration of hazards making obscure the true intent of the policy. Read without reference to the wealth of legal lore referring to this particular part of the policy, the document is vague, misleading and perhaps unintelligible. But practically every word in the paragraph has been weighed in the judicial balance and its own meaning and its meaning in relation to the context has been determined. Therefore this particular wording has continued through the centuries, with some slight modifications appearing in the various forms of the individual companies, but in general the same wording being followed in all. No company cares to adopt an entirely new wording, lest the established practices and decisions of the preceding centuries be overthrown and a new contract, subject to all the dangers of new legal interpretations, be found to leave the meaning of the policy in doubt.

A Formidable List of Calamities.—The enumeration of the perils in the printed form under consideration is worded in the following manner, *i.e.*,

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"Touching the adventures and perils which the said ..... Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints and detainments of all kings, princes, or people, of what nation, condition or quality soever, barratry of the master and mariners, and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof."

Truly this is a formidable list of calamities and seems to afford but little hope of escape for the underwriter. The courts, however, have been reasonably kind to the underwriters in their interpretation of these perils and have in most cases tempered justice with mercy.

Doctrine of Proximate Cause.—It will be noted that the policy applies only on the voyage insured and covers only losses occasioned by the perils stipulated, provided these hazards or any one of them is the proximate cause of the loss. The doctrine of proximate cause is in no way peculiar to the subject of marine insurance, since it is a familiar principle of all law concerning the liability of one person to another for injury suffered. This principle of fixing liability by considering the direct, primary and immediate cause of the injury suffered and not the remote and indirect cause, is of the greatest importance in determining liability under marine insurance policies. Phillips in Section 1132 of his admirable work on the law of marine insurance sets forth the determination of the proximate cause in these words:

"In case of the concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the efficient predominating peril, whether it is or is not in activity at the consummation of the disaster."

That is, if at the time of disaster there are in operation two perils, one of which is covered under the policy and the other is not, as in the case of a marine peril operating at the same time as a war peril, it must be determined which of the two perils is the all efficient and predominating one which caused the

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resultant loss. The fact that the hazard which was the proximate cause was not in activity at the moment of destruction would not preclude that peril from being the actual and efficient cause of disaster. To illustrate, a steamer insured under a policy covering marine risks only, might be torpedoed, but nevertheless still float and have a reasonable chance of making port. Because she is partially out of control of the master, however, on account of making water and having a heavy list, in endeavoring to make port the steamer might miss the channel, run ashore and become a total loss. The immediate cause of the total destruction of the vessel would undoubtedly be the stranding, a marine peril, but the proximate cause would be the torpedoing, a war peril, and the loss should not fall on the marine underwriter.

Losses Which are not Covered by the Policy.—It must be borne in mind that while an underwriter is liable for losses caused by perils of the sea, the meaning of which will be explained presently, he is not necessarily liable for perils on the sea. The underwriter is not liable for the ordinary and inevitable action of the forces of nature causing ordinary wear and tear to the vessel. He is not liable for the natural decay of the vessel due to the passage of time. He is not liable for loss arising from the subject itself because of its inherent qualities, nor is he liable for a fire arising from the improper preparation of a raw commodity, as for instance the occurrence of spontaneous combustion in a cargo of hemp which was shipped in an improperly cured condition. But it seems he may not deny liability for consequent damage to property insured by him belonging to another which is part of the same venture. Neither is the underwriter responsible for loss caused by the ordinary leakage of liquids. He is liable, however, for events which, through no fault of the assured, enhance the risk, as for instance unavoidable delay in the commencement or prosecution of the voyage, by which the time at risk under the policy is increased beyond that in contemplation by the underwriter at the time of accepting the risk. Therefore, if a policy in time of peace covers the risks of war at a determined rate for a named period, and war suddenly breaks out, the underwriter is not relieved of his responsibility, notwithstanding the fact that the compensation that he

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is receiving, through the occurrence of an unforeseen event, is inadequate.

Losses Due to Fraud or Misconduct.—An underwriter, obviously, is not responsible for losses caused by perils insured against, which are directly incurred by fraud or misconduct, but it must be shown that such fraud or misconduct is the proximate cause of such loss. Negligence in order to void the policy must amount to gross negligence or to willful misconduct. Errors of judgment on the part of the captain of a vessel will not forfeit the insurance, but willful misconduct done in bad faith and illegally, or gross carelessness of the captain, showing culpability, will not be covered by the policy unless barratry, which term will later be explained, also is covered. In connection with the preceding remarks it should be noted that Congress in 1893, in order to promote the overseas commerce of the United States, passed what is known as the "Harter Act" (see Appendix, p. 417). This statute relieves the owner of a ship from the consequences of careless or negligent acts on the part of the master of the vessel, or from liability for losses caused by inherent defects or weakness in the vessel itself, provided the owner or his manager has taken all precautions to provide a seaworthy vessel, which has been adequately equipped and manned by a competent master and crew. Similar statutes are found in the laws of other maritime nations.

Perils of the Sea.—In the enumeration of the hazards against which protection is afforded by the policy, perils of the sea are first mentioned. These are the general words used to describe all losses which are the result of the unusual action of the forces of nature operating in and about navigable waters. A careful distinction must be made, however, between "perils of the seas" and "perils *on* the seas." The policy does not, under the form of wording used, cover all perils which may overtake the venture on the seas, but only those which are the direct result of actual perils of the sea. Included in these general words are losses resulting from the unusual action of the wind, not the ordinary wear and tear caused by the ever-moving atmosphere, but losses resulting from the tempestuous action of this force. It is not necessary that the resultant loss be an immediate effect of wind as the loss of sails or the snapping of a mast. It may be a con-

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sequential loss occasioned by the wind, as the leaking of the seams of a vessel, through unusual strain on sails and masts by excessive wind pressure.

Enumeration of Perils of the Sea.—The tempestuous action of the waves causing a vessel to be buffeted and battered by the force of the water is a peril of the sea, as are also the risks of stranding on reefs, rocks and shoals. Loss caused by the action of lightning is also a peril of the sea, lightning being distinguished from fire, in that loss may be occasioned by the action of lightning without any fire resulting. Collision is also one of the perils of the sea, occasioned as it often is, through the presence of fog or darkness or ice or other natural condition interfering with the navigation of the vessel. Collision may involve the coming together of vessel with vessel or the collision may be of one vessel with an iceberg or with some other floating or stationary object. The use of the word "collision" as a peril of the sea should not be confused with the protection provided under marine policies on hulls, wherein the underwriter assumes responsibility for the liability imposed upon the owner of a vessel for loss caused to innocent third parties by the negligent collision of his vessel with another.

Unavoidable Accident a Peril of the Sea.—"Perils of the sea" will also cover unavoidable accident, the result of the physical topography of the ocean shores and the ocean bed. For instance a vessel in a properly equipped tidal harbor may take the bottom in a place where through action of the tide or through some other unavoidable cause the bottom is uneven, causing the vessel to tip with resultant damage to the hull or cargo. Derangement of or damage to the machinery of a steamer or mechanically propelled vessel through stress of weather or other fortuitous cause is also covered under the general words "perils of the sea."

Other Perils of the Sea.—The policy covers seawater damage due to an insured peril and it has been held that injury caused by rats on board ship is also a peril of the sea provided the owner and captain have exercised reasonable care to rid the vessel of this pest. It would seem, however, that damage by rats is rather a peril *on* the sea, than a peril *of* the sea, and that underwriters should not be held liable for losses of this nature unless specially insured against. In fact, it is so ruled in paragraph 55, Section

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(C) of the Marine Insurance Act of Great Britain. Sinking, of course, is comprehended in the term "perils of the sea" this being the inevitable result of most of the "perils of the sea" if their action is not controlled and checked.

Fire.—It will be more logical to ignore the sequence of the hazards as they appear in the printed form and consider first the perils which are marine in their nature and then treat of those which are the result of the acts of individuals or of nations. Fire is specifically mentioned as this is not a peril of the sea but a peril on the sea. The underwriter is liable not only for the actual cargo or the particular part of the vessel destroyed by fire, but is also liable for consequential losses resulting from the fire. Thus the underwriter assumes responsibility for damage caused by water or steam used in the hold of a vessel in an endeavor to smother the fire, or by the action of smoke damaging cargo not touched by the fire, or penetrating other holds not involved in the fire (see General Average, p. 307). The underwriter is also liable for the action of chemicals or gases used in an endeavor to smother the fire, as in the case of some of the patent fire extinguishing apparatus with which vessels are equipped.

Fire Protection.—Fire is one of the greatest and most feared dangers which mariners face. A great deal has been done by the installation of fire-fighting devices and fire detectors to prevent and control fires at sea, but much remains still to be done. Perhaps no problem connected with marine perils offers a more fertile field for the inventor than does this. Fire control on sea is materially different from that on land and yet in some respects is essentially the same. Steam injectors take the place of stand pipes in buildings. Fireproof and watertight bulkheads correspond to the fire walls in land structures, while sprinkler systems so common in buildings have been installed in but few steamers. When the depth of a steamer's hold is considered, the futility of the ordinary form of sprinkler will be seen. A fire starting at the bottom would probably attain such headway, before the sprinkler would work, that it would be useless even if it were possible for the water to reach the seat of the fire. Above the lower deck of a vessel where the height of the cargo space is not great sprinklers are very effective, if enough heads are provided, but the problem of a water supply by gravity feed is not

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so easy as on land. A dry system may, however, be used. It must be remembered that when at sea the hatches of a vessel are usually closed, so that a fire may smolder and attain a firm hold on the cargo some time before it is detected. Up to the present, steam introduced into the hold by means of steam pipes so installed as to give a good distribution of steam over the entire hold, has been found most effective in the control of fires. Other devices introducing gases which absorb the oxygen in the hold and thus smother the flame are very effective, but their installation is expensive and the chemicals used sometimes do a great amount of damage to the cargo. While the fire hazard does not affect the seaworthiness of the vessel, in the ordinary meaning of that term, from the viewpoint of the marine underwriter the design and equipment and loading of a vessel with respect to the fire hazard has a material bearing on the seaworthiness of the vessel as an underwriting proposition.

Jettison.—Jettison is another peril on the sea, but not of the sea, which is specially covered by the policy. Jettison is defined by Phillips (Section 1278) as,

> "the throwing overboard of part of the cargo, or of any article on board of a ship, or the cutting away of masts, spars, rigging, sails, or other furniture for the purpose of lightening or relieving the ship in case of necessity or emergency."

Jettison must be distinguished from "washing overboard" which is a peril of the sea with respect to cargo which is laden and specially insured on deck. Jettison is a voluntary act done for the purpose of saving the general interest. The early mariners in their frail craft, found that the best way to save their lives and their ships in the event of storm was to throw cargo out of the ship to lighten it. Jettison, therefore, was the cause of many of the early losses, and proved a great burden to the merchants. At a very early period in commercial history, losses by jettison were considered as sacrifices made in the common interest and were treated as general average losses for which contribution was made by all interested parties. With the invention of insurance this practice was firmly established, so that underwriters today are more interested in the method of contributing for loss by jettison than in the actual jettison itself.

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Barratry.—Jettison being a voluntary, justifiable act of the master of the vessel, it will be proper to consider next the peril of barratry which is occasioned by the willful misconduct of the master or the mariners. Barratry is defined as a fraudulent breach of duty or a willful act of known illegality on the part of the master of a ship, in his character of master, or of the crew, to the injury of the owner of the ship or cargo and without his consent. It includes every breach of trust committed with dishonest purpose, as by running away with the ship, sinking or deserting her or by embezzling the cargo. At the present time with the rapid means of communication existing between the ends of the earth, barratry has become a rather unprofitable and dangerous occupation. In former times, however, when a vessel would be unheard of for months at a time, it was not unusual for the captain to use the ship for his own purposes. Such unlawful act was barratry and a loss occurring during such misuse of the vessel would not be covered unless barratry was included among the insured perils. So willful violations of law, such as the violation of a blockade or an embargo, or trading with the enemy, even though done for the purpose of benefiting the owners are barratrous acts. The willful action of the master or the mariners in putting the vessel in a position of peril by disobeying the instructions of an authorized pilot or cutting a cable so that the vessel would run ashore, or proceeding on a voyage when capture by the enemy was certain and other like cases have been held to be barratrous acts. In any particular case it is necessary to distinguish between willful misconduct and errors of judgment, although gross ignorance and recklessness on the part of the master may amount to barratry. As the master is the agent of the owner in the management of the vessel, it is quite usual to except the risk of barratry of the master in an insurance on the hull. This seems logical as it is rather strange to insure the owner of a vessel against the wrongful acts of one who he himself has intrusted with the care of the ship. With respect to the mariners the case is different in that these men are not directly chosen by the owner, but rather by the master. It is quite reasonable, however, that the cargo owner who has no voice in the selection of the master or crew should have protection against their wrongful acts.

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Lawless Acts and War Perils.—The remaining perils specifically enumerated refer to the overt acts of persons or peoples who are not connected with the venture but who either from personal or national motives seek to injure, appropriate or destroy the ship and its cargo. These perils naturally group themselves into two classes. The first class includes perils which are the result of the acts of individuals or groups acting on their own responsibility and without the sanction of any recognized government. These hazards are described as pirates, rovers, and thieves. The second class is composed of those perils which are the results directly or indirectly of the belligerent acts of hostile governments. These latter acts are supposed to be executed in accordance with the principles of international law and in wars previous to 1914 such law was generally observed. In the recent World War, however, at least one of the belligerents set up a new standard of conduct claiming that might is more powerful than right, with the result that marine underwriters had to revise their preconceived notions of the hazards which belligerent action involved. The peril thieves describes the acts of an individual or a band of individuals acting in contravention of the law of the place where the criminal act of theft is committed, while rovers and pirates describe similar acts committed on the high seas under the sanction, it may be, of an unorganized and unrecognized government acting in defiance of international law.

Theft and Pilferage.—Theft may be first considered. Theft as used in the marine insurance policy is generally recognized by merchants and by the textbook writers as robbery committed by force as distinguished from robbery committed by stealth, which latter form of larceny is known by the specific term "pilferage." It was always the intention of underwriters to protect property on vessels from losses occasioned by the criminal acts of those who obtained access to the property by force. Pilferage, however, was not in the contemplation of the underwriter when property was insured, because such loss was supposed to be the result of the criminal acts of those who had a right to be with the property, such as stevedores or others who by stealth mingled with them and thus had access to the goods. Unfortunately this theory and practice were overriden in certain state

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courts, where the judges, in an academic discussion of the meaning of the word thieves, ignored for the most part the practice of merchants and underwriters which of old were the basis on which marine insurance law was determined, and held that the word thieves covered what is commonly known in marine circles as pilferage. Accordingly most policies in use in the United States have inserted the words "assailing thieves" in order to make clear the original and present intention of underwriters in insuring against theft. It is interesting to note in this connection that no such interpretation has been given to the word thieves in the English courts and in the Marine Insurance Act, paragraph No. 9 of the rules for construction reads, "The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers." Such clandestine theft under the term "pilferage" is generally included in marine policies by special stipulation with unfortunate results to both assured and underwriter. This undesirable condition is due to the fact that the ship is not held liable for this petty thieving. It is against public policy that the ship be relieved of this liability either by agreement in the bill of lading or otherwise, nevertheless no practical method has been devised for proving that these losses occur while the property is in the custody of the carrier.

Pirates and Rovers.—The two expressions pirates and rovers are hard to distinguish, both terms referring to depredations committed on the high seas in violation of the laws of nations and of such a character that if committed on the land the crime would amount to a felony. Pirates and rovers are the outlaws of the high seas and the enemies of society owning allegiance to no authorized government. It may be that the word pirates originally referred to those who lay in wait on the high seas, hoping to entrap their victims; while the word rovers referred to those who sailed the high seas seeking their prey. Such inferences are, however, conjectural. Gow suggests that the word rovers may have been added to include specially the Mohammedan sea robbers of North Africa. These two perils have, however, become obsolete since the United States cleared the sea of the Barbary pirates in the early part of the nineteenth century, though many of the acts committed in the World War amounted to piracy, notwith-

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standing the fact that they were committed under the authority of a so-called "established" government.

War Perils.—The remainder of the perils enumerated in the policy are true war perils and it was the insuring of these risks that caused the gigantic development in insurance in England in the latter part of the eighteenth and the beginning of the nineteenth century. History has repeated itself and again an unprecedented expansion in marine insurance resulted from the exigencies of the late war and the enhanced risks to which property at sea was exposed. In the enumeration of these war perils difficulty is experienced in determining what is the real meaning of the words. Some of the words, used to describe perils, have become obsolete and others are so alike in meaning as to make difficult any differentiation in the perils to which they refer.

Men-of-war.—The first of the war perils known as men-of-war is an elastic term general enough in its meaning to include all the new devices that new wars produce. "Men-of-war" refers to the aggressive acts of a belligerent government committed on the seas by means of war machines. In the early days of international strife men-of-war was a word which adequately described the only marine offensive weapon. Today, however, the words refer not only to battleships, the successors of the former men-of-war, but to submarines, airplanes, destroyers, and the equipment of these devices in the form of torpedoes, mines and bombs. Mines, both stationary or floating, and all other mechanical devices used by belligerents to effect the destruction of property on the sea are included in the term "men-of-war."

Enemies.—If there be question whether or not any particular offensive device is included under the term men-of-war, the next peril, that of enemies is broad enough to include that device. Doubt has been expressed as to whether cruisers are men-of-war, but if they are not they certainly are enemies and can find refuge under that term. The peril of enemies would seem to be embraced by the peril of men-of-war, but it may be that the word enemies was introduced into the marine policy to protect the assured against losses occasioned by the acts of privateers and other openly declared foes under a belligerent flag, who are authorized to carry on warfare but who do not belong to the government whose flag they fly.

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Letters of Mart and Countermart.—While privateering was formally abolished by civilized nations by the Treaty of Paris in 1856, the references to this mode of warfare still remain in the policy. Letters of mart and countermart refer to privateers. These letters were granted by belligerents to their citizens who had suffered loss at the hands of the enemy in order that they might recoup their losses. Letters of mart refer to the commissions granted by one of the belligerents to its citizens, while letters of countermart describe the commissions granted by the opposing belligerent to its citizens as a retaliatory measure. These letters granted a limited commission to the privateer, who should be distinguished from the pirate, as the former sails under a national flag, is under governmental commission and operates only against the declared enemies of his own nation. The practice of issuing these letters is now condemned, hence these terms are relatively unimportant to the student of marine insurance.

Reprisals.—It is difficult to distinguish reprisals, the next war peril enumerated, from letters of mart and countermart, but the word may have been inserted in the policy to cover losses occasioned by acts done in retaliation for wrongs against one nation or its subjects committed by another nation or its subjects, short of actual war. The word has been in common use in the recent war with reference to acts of retaliation against crimes committed by one of the belligerents in violation of international law. Whether or not a similar meaning is intended in the insurance policy is a matter of conjecture. It is interesting to note that in the Lloyd's form of policy the word "reprisals" does not appear, but in its place is found the word "surprisals," which would seem to be synonymous with "takings at sea," which is the next peril enumerated in the American form.

Takings at Sea. Arrests.—This expression is equivalent to the modern word "capture" and refers to the forceful taking of a vessel or its cargo with the intention of retaining possession thereof. In the recent war "capture" was the principal peril to which property of the Teutonic Allies or their sympathizers was subject, while men-of-war describes the principal peril to which the property of the rest of the world has been exposed. The word arrests, while similar in meaning to "takings at sea"

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has reference more particularly to the capture of a ship or cargo for the purpose of making an examination and then after adjudication, retaining or releasing the property.

Restraints and Detainments.—Restraints refer to the action of a government in establishing an embargo or other restrictive measure, thus preventing the free use of its ports by commercial vessels, causing the interruption and possible loss of voyages involving such ports and perhaps consequent sacrifice of cargo. Detainments on the other hand refer to losses resulting from the detention of a vessel and its cargo by blockade or possibly by a quarantine regulation or some other interference by the police power of a nation while a vessel is in port. In this connection, however, the use of the word detainment does not extend to losses which are the result merely of delay or interruption of the voyage, and cause, for example, injury through loss of market or some other remote cause.

Kings, Princes or People.—The modifying words "of all kings, princes or people of what nation, condition or quality soever" are introduced to show that the perils intended to be covered are not the mere acts of individuals, but the acts of groups of individuals organized into governments, whether such governments be duly constituted or not. The rules of construction of The Marine Insurance Act of Great Britain, paragraph 10, state that this phrase refers to political and executive acts, and does not include a loss caused by riot or ordinary judicial process.

All Other Perils.—The closing words of the "perils clause" reading "and all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof" if unexplained is exceedingly misleading. If the words mean what they state the enumeration of specific perils would seem to be needless, but the very fact that specific perils have been enumerated gives the key that unlocks the meaning of these words. It has been decided more than once that there must be read into this clause after the words "and all other perils," the words "of the same nature." It is only fortuitous perils happening while the property is under the protection of the policy that are covered by these general words and not every conceivable injury that may come to the hurt, detriment or damage of the property. Had such construc-

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tion not been given to this clause underwriters would have had either to revise the basic wording of their policy or burden the document with exceptions.

The "Free of Capture" Clause.—While the policy covers war perils, it is customary, in view of the hazards to which property is suddenly subjected by the declaration of war, to incorporate into marine policies a clause known as the war clause or the "free of capture and seizure" clause by which the underwriter is relieved of all purely war perils. Various forms are used to accomplish this end, but they are all alike in their purpose. By the deletion of this clause the policy is immediately restored to its original condition, but the underwriter is then in the position of being able to charge adequate rates of premium for the increased hazard assumed. Underwriters in their eagerness for business, have sometimes offered as an inducement in times of peace, a policy covering the risks of war without special charge or with merely nominal addition for the war hazard; only to find themselves, in the event of sudden war, committed to these hazards without the opportunity of charging adequate premium for the increased risk placed upon them.

Strikers and Locked Out Workmen Clause.—Owing to the fact that marine insurance on cargo is usually extended to cover from warehouse to warehouse or otherwise insures the goods on shore prior to shipment and after discharge, the danger of underwriters being held liable for losses, resulting from the unlawful acts of strikers or due to riots or civil commotions, is materially enhanced. In such cases the loss is usually due to fire but it is often difficult to prove whether the proximate cause of the fire was a natural cause or was the result of an unlawful act. Underwriters are unwilling to assume liability for losses due to such unlawful acts unless opportunity is afforded for the special consideration of these risks. Accordingly most cargo policies contain a clause similar in import to the following, viz:

"Warranted free of loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions."

As in the case of the "Free of Capture and Seizure Clause," underwriters will as a rule waive the "strikers and locked-out

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workmen" clause in consideration of the payment of additional premium. The clause recommended by the American Institute for this purpose reads:

"In consideration of an additional premium of —— percent (such premium being subject to revision from day to day) it is agreed that this policy shall also cover destruction of the property insured or damage done to it by strikers, locked-out workmen, or persons taking part in labor disturbances or riots or civil commotions, but warranted free of claim for loss, damage or expense arising from deterioration, loss of market or delay, or from extra handling or storage."

Modifying Clauses.—Much of an underwriter's time is consumed in preparing and inserting in policies clauses restricting or enlarging the protection afforded by the basic form of policy, but the contract as originally worded has stood the test of time and offers a full measure of protection against the perils to which property in transit over water routes is exposed.

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CHAPTER 9

THE POLICY (*Concluded*). SUE AND LABOR CLAUSE

Sue and Labor Clause.—The "Sue and Labor" clause immediately follows the enumeration of the insured perils, and is found in all Marine Insurance contracts. When the words were first inserted in policies is not known, but a clause appears in the "Tiger" policy dated 1613 which is of similar import. The latter part of the clause, the "waiver," is however of later origin and may have been introduced in part at least to make clear the privilege of the underwriter himself to step in and protect the insured property. The "Sue and Labor" clause reads:

"And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured,..... factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured . . . ."

Purpose of Sue and Labor Clause.—In the early days of overseas commerce voyages were of long duration and the means of communication between the various ports of the known world were slow and unreliable, so that it became necessary for the assured and his underwriter to agree that in the event of misfortune overtaking the venture, it should be the duty of the assured, who in the early days either accompanied the ship or the cargo himself, or sent as his representative an agent known as the supercargo—to use every means within his power to protect the property and save it from further damage after loss had occurred. He was authorized to incur expenses for this purpose and the measure of his duty was the care a prudent uninsured owner would exercise in regard to his property. The

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assured and the underwriter also agree in this clause that their legal position with respect to loss recoverable under the policy will in no way be affected by any acts which either may perform toward the safeguard and recovery of the imperilled goods or ship. It will be observed that this clause becomes operative only after loss or misfortune has occurred and is not merely a statement of the duty with which the law would naturally charge an assured, but is an affirmative agreement that it shall be necessary for the assured to perform the duty of saving and preserving the property.

Applies to Specific Property Insured.—The "Sue and Labor" clause is strictly limited in its application to the specific property or interest to which the policy relates and to the expenses incurred solely in relation to such property or interest. Efforts may be put forth and expenses incurred which in a measure benefit the insured interest, but are not of exclusive value to this interest, since in their nature they are common benefits and thus more in the nature of general average charges. Such efforts and expenditures do not come within the meaning of the sue and labor clause and the underwriter assumes no direct responsibility for them.

Assured Must Enforce His Rights Against Third Parties.—The original purpose of the "Sue and Labor" clause has become more or less obsolete owing to the present rapid means of communication between different parts of the world because of the submarine cable and the wireless telegraph, it now being customary for the underwriter to give specific instructions as to salvage measures to be undertaken and as to expenses to be incurred. Nevertheless the clause is of vital importance at the present time. Many losses which overtake property, especially cargo, are due to the negligence or breach of duty on the part of some third party. The enforcement of claims against such negligent persons and the collection of damages for the injured property are in many cases troublesome, and the assured is inclined to ignore his legal remedies and to fall back on the protection of his insurance policies. The underwriter has no direct recourse against these third parties, but by invoking the requirements of the "Sue and Labor" clause, he is enabled to hold the assured to his duty of taking the necessary measures to protect and enforce his legal rights with respect to the damaged property.

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The Premium.—The Sue and Labor clause is followed by the words, "having been paid the consideration for this insurance by the assured or .....assigns, at and after the rate of ....." The premium furnishes the valid consideration without which the policy would not be an enforceable contract, but the wording as given in the policy form must not be construed as a confession on the part of the underwriter that the premium has been paid by the assured. It is rather a condition upon the fulfillment of which the underwriter will carry out the agreements to which he has obligated himself. It is interesting to observe in this connection that the Lloyd's form of policy reads: "Confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of....." Even this has been held to be only *prima facie* evidence of payment and the question whether or not the payment has actually been made can be opened up in a court of law and the facts determined.

Competition Affects Rates.—No part of the policy is of more interest to the underwriter than is the rate of premium. Upon the proper determination of this rate depends his success or failure. Rates too high drive business to others, rates too low invite failure. The question of premium is much more vital to the underwriter than it is to the assured, for the latter should be interested primarily in the security of the insurance company and secondarily in the rate of the premium. It is axiomatic in insurance that the best is in the long run the cheapest. Rates are, as already indicated, based on the law of averages and tested by the experience of a period of years. The law of supply and demand, or in other words the presence or absence of competition, as in other lines of commercial activity has an important bearing on the cost of insurance.

Premium, Charged on Amount Insured.—The amount of premium appears in the margin of the policy and is determined by multiplying the sum insured by the rate of premium. The rate of premium is expressed ordinarily as so much percent, that is, one percent indicates that the cost of the insurance is one dollar for each one hundred dollars insured, one half percent indicates that fifty cents is the cost of each one hundred dollars of insurance. The amount insured in a special policy is deter-

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mined by agreement at the time the risk is insured. Under an open policy this amount is calculated by applying the basis of valuation to the invoice or quantity insured, depending upon whether the invoice, or a unit of measure as the pound, ton, or barrel is specified by the floating contract as the basic measure of value. Of course, under a floating policy the amount insured on any one risk cannot, in the absence of special agreement, exceed the limit of liability expressed in the contract.

Rates of Premium Used in Great Britain.—It is interesting to observe in this connection that the method of quoting rates in Great Britain, while similar to the American system in principle, is different in expression. In Great Britain one hundred pounds sterling is the basic unit of insurance, so that we find rates expressed as one pound percent, two pounds percent, etc., indicating that the cost of insurance per hundred pounds sterling is respectively one pound and two pounds. When the rate is less than one pound percent, a different set of symbols is used. As there are twenty shillings in a pound sterling and twelve pence in the shilling, small rates are expressed as so many shillings or pence percent. For instance a rate of one-twentieth of one percent in an American policy would be expressed in the English form as one shilling percent, while a rate of one-sixteenth percent or six and one-fourth cents per hundred dollars, would appear in the English policy as one shilling three pence percent or ⅓ percent as it is usually written. This method of rating is very confusing at first, but if the relative values of the pound sterling, shilling and pence are kept in mind, and the fact that the unit of insurance is one hundred pounds sterling this confusion of thought will soon disappear and the English rates will be as readily understood as are the American.

Return Premium.—Closely associated with the subject of premium is the question of return premium. It has been held that there can be no return premium after a risk has once attached, unless it can be shown that the risk insured is divisible and that the rate as quoted is also divisible—that is, that a definite part of the rate quoted is to apply to each portion of the risk insured. The reason for permitting an underwriter to retain full premium after the risk has once attached, even though only a portion of the voyage is accomplished may be best ex-

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plained by considering the case of an annual hull insurance. It has been held by the courts that the rate charged for such insurance is an annual rate, not based on so much rate for each day's risk or each month's risk, but an indivisible charge adequate for the year's risk. The courts, therefore, have held that as they cannot determine justly what portion of the rate should apply to the part of the risk actually incurred in case the vessel is destroyed during the insured period, the underwriter is entitled to retain the whole premium. That this reasoning is sound will be apparent when it is considered that under an annual policy, covering a vessel which is operating over a route subject to seasonal hazards, the major part of the total hazards incurred during the policy term, may be encountered in three months, while during the remaining nine months the vessel is operating over comparatively safe waters. To determine how much of an annual rate applied to any portion of the annual period would be merely an estimate, the underwriter having named an average rate for the entire year. The same reasoning is applied to other forms of policies. It is upon this theory that return premiums are not allowed when the insured subject is destroyed during the policy term by a peril not insured against. Thus in the case of an annual marine policy on a hull no return premium is allowed if the insured vessel is destroyed by a war peril. To avoid this rule of law specific provisions for the return of premium under certain circumstances are found in policies, but these clauses will be considered in the special discussion of cargo and hull insurance.

Proofs and Payment of Loss.—The next subject referred to in the policy is that of losses, the form reading,

"And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said ..... (the subject matter of the insurance) ..... (the amount of the Note given for the premium, if unpaid, being first deducted), but no partial loss or particular average shal in any case be paid, unless amounting to *five percent.*"

Two requirements are thus imposed upon the claimant before there is any obligation on the part of the underwriter to make settlement of loss. First the claimant must furnish proof of loss and second he must prove an interest in the insured subject.

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The usual form of proof to establish the first point is the protest of the master of the vessel. This document is in affidavit form, in which the master sets forth before a notary or other person commissioned to administer oaths, the incidents of the voyage, laying special stress on particular perils encountered which would probably result in damage to the vessel and its cargo. This protest is usually made in short form immediately on arrival at the first port after disaster has occurred, the protest, if necessary, being "extended" as it is called, later on when a more detailed description of the events occurring at the time of the casualty is given. The protest receives its name from the fact that in the document the master protests that whatever damage may have been sustained, happened through no fault or breach of duty on his part. The log of the vessel may also be examined to establish the facts in regard to the cause of loss.

Proofs of Interest.—Proof of interest is ordinarily made by offering to the underwriter the invoice and the bill of lading, the former document determining the basic value of the commodity, the latter proving that the goods were actually on board the vessel which has been overtaken by disaster. If a certificate of insurance has been issued this document is offered as a proof of insurance, or if a certificate has not been issued the policy itself is presented to the underwriter in evidence. Other documents may also be required. Thus in the case of hull insurance, the certificate of enrollment may be presented to prove by a governmental document, the ownership of the vessel, or in the case of freight insurance the freight list or the charter party may be offered to prove the amount of freight at risk.

Adjustment of Loss.—Having presented these proofs of loss and proofs of interest in proper form, the loss, if a claim under the policy, is due and payable thirty days after such presentation. Whether or not such loss is a claim under the policy is determined by the underwriter's adjustment, the method of preparing which will be considered in the discussion of losses. This adjustment may be made by the underwriter himself or if loss happens at a distant place, the documents may be presented to the underwriters' agent who may make the adjustment. Sometimes the agent will give merely a certificate showing the apparent cause and extent of the damage. This document is attached

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to the other proofs of loss and the claim is sent to the underwriter for adjustment. Whether or not the adjustment will show a valid claim under the policy depends primarily on two facts. First, was the proximate cause of the damage or loss suffered one of the perils insured against, and second does the amount of the loss equal or exceed five percent. If both these facts cannot be established there is no claim under a policy issued in the form under consideration. If these facts are both established, then if the premium is unpaid or if the note given for it is unpaid such premium will be deducted from the amount of the loss and the balance if any will be due and payable thirty days from the day complete proofs were presented to the underwriter.

Average Clauses. The Franchise.—The words in the loss clause reading, "unless amounting to five percent" open up one of the most interesting and important questions in the realm of marine insurance. The fixing of the percentage of average or loss, sometimes called the franchise, requires a considerable degree of skill and an intimate knowledge of the intrinsic qualities of property to be insured. Five percent in most American policies or three percent in the English form is fixed as the general minimum damage which must be incurred to permit a valid claim under the policy, but this percentage having been reached, the underwriter assumes liability for all the damage suffered through a peril insured against.

Deductible Average Clauses.—It may be, however, that the average clause is so worded that the minimum percentage or amount when reached is not allowed as a claim, but is deducted from the total amount of the claim, the excess over and above what is known as the deductible franchise being paid. These deductible average clauses are worded in a variety of ways, such as: "Subject to a deductible average of ——— percent or $———" or "Free of particular average under ——— percent, which is deductible." Deductible average clauses naturally result in lower rates as a greater measure of responsibility remains with the assured, than is the case with the ordinary form of average clause.

Purpose of Average Clauses.—The reasons for inserting average clauses in policies are in the main twofold. The principal reason is to relieve the underwriter of the inevitable losses to

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which certain property from its very nature or mode of shipment is subject, thus preventing a multiplicity of petty claims. These clauses also relieve underwriters from the annoyance and expense of adjusting petty claims, which while fortuitous in their character are nevertheless trifling in amount. The elimination of these claims results in a net saving to the assured, as the increased cost of insurance necessary to provide for the expense of making these adjustments would far exceed the amount of the losses themselves. This will be evident when consideration is given to the files of documents which transportation companies have in connection with some petty claims, the postage alone on which is often many times the amount of the claim itself. When to this expense is added the cost of paper, notary fees, and the salaries of those who are charged with the adjustment of the losses, the economic advantage of eliminating petty claims in marine insurance will be apparent.

Average Clauses Reduce Cost of Insurance.—The second reason for inserting average clauses is to reduce the cost of insurance. An underwriter may be willing to grant a minimum average of say five percent on a certain commodity, but the cost of such insurance from the standpoint of the merchant is prohibitive. He accordingly is oftentimes willing to assume a greater percentage of partial loss, in order to obtain a lower rate which will enable him to carry out his contract without financial loss. Or it may be that the merchant from his intimate knowledge of the commodity and its mode of shipment is confident that it will result in a net saving to him to pay a reduced rate for insurance and to assume the liability for partial losses. The method used to amend policies so as to relieve underwriters of a measure of their customary liability is to insert in the contract an average clause which modifies or overrides the average clause in the printed form. Such clauses may contain a franchise as high as ten percent, twenty percent or even fifty percent, or may be deductible in their form, or may be so worded as to eliminate all claims unless a definite named casualty occurs, as in the case of the common F.P.A.A.C. (free of particular average American conditions) clause, as it is known, reading, "Free of particular average unless caused by stranding, sinking, burning, or collision with another vessel."

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Double Insurance.—The next section of the printed form deals with the subject of prior, simultaneous and subsequent insurance. Herein is found one of the principal differences between American and British insurance practice. The clause in question reads:

"Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said ..... Insurance Company shall be answerable only for so much as the amount of such prior insurance may be deficient toward fully covering the premises hereby assured; and the said ..... Insurance Company shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises, subsequent in day of date to this policy, the said ..... Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said ..... Insurance Company shall not be liable for more than a rateable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance."

Little need be said in explanation of this portion of the policy. The American theory of double insurance as herein set forth is that if insurance has been effected prior in day of date to the policy in question the underwriter shall be relieved of all liability for loss except in so far as the prior policy is deficient in amount, not fully protecting the property insured. The insurance company agrees to return premium on so much of the amount as is overinsurance. If there are two or more policies on the same property and aggregating in amount more than the insured value of it, simultaneous in day of date, then the various underwriters become co-insurers, each agreeing to be responsible for his pro rata proportion of the loss and each retaining his pro rata share of the premium. If the policy in question, however, is prior in date to any other policy then the underwriter agrees to assume full responsibility for loss to the amount of his policy, and is entitled to retain the full premium charged.

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Theory of Double Insurance Different in Great Britain.—This principle of double insurance is quite different from the practice in Great Britain where the priority of the date of a policy has no control over its validity. An assured may be very much overinsured, in fact after having placed the risk in full with one underwriter, he may again insure it with a second underwriter, each of whom is liable in the event of loss for the entire amount of his policy. The assured, however, cannot collect his loss twice and the two underwriters stand in the position of sureties one for the other, he from whom the loss has been collected having a valid claim upon the other underwriter for a rateable contribution to the loss. The English doctrine is set forth in the following words in Section 80 of the Marine Insurance Act—

80. (1) Where the assured is overinsured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

Under Insurance.—Closely analogous to the subject of double insurance or over insurance is that of under insurance. Here the rule in America and England is the same and is succinctly stated in section 81 of the Insurance Act in the following words:

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

This rule is peculiar to marine insurance. The insurer in the case of fire insurance where the customary form of unvalued policy is used, is liable for the entire loss not exceeding the amount of his policy or not exceeding the real value of the insured subject whichever amount is the smaller. Fire insurance has in certain cases adopted marine insurance practice, inserting in policies the so-called co-insurance or average clauses, by which under certain conditions the assured becomes a co-insurer with

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his underwriter. The motive for using such clauses in fire policies is primarily to produce premium, in that to escape the effect of the co-insurance clause the assured must carry insurance equal in amount to a certain fixed percentage of the value of the insured property. The higher this percentage is the lower the rate of insurance. The principle of co-insurance in marine underwriting, however, is fundamental and applies in all cases.

Insurance on Same Property Covering Different Risks.—Careful distinction should be made between double insurance and insurance under two or more policies, each one of which, while relating to the same property, covers different risks to which that property is subject. Thus in the case of three policies, the first covering total loss and liability under the Free of Average English conditions clause, the second other partial losses or "difference in conditions" as it is known and the third, war risks, each underwriter is responsible for the particular losses against which he provided insurance.

Carrier's Liability.—At this point there is inserted in many of the printed forms in use by the several companies, clauses worded in various ways the general intent of which is to make the policy null and void in the event of there being other insurance on the property, furnished by a transportation company under its bill of lading, or otherwise, except in so far as such carriers' insurance may be deficient to cover the loss incurred. Similar provision is made in regard to fire insurance prior to loading on or after discharge from the vessel. The purpose of these clauses will be considered when the question of losses is discussed.

Illicit or Prohibited Trade.—Insurance companies, in order to protect themselves from unwittingly assuming liability for losses caused by perils against which they do not wish to give protection, have inserted in the printed policy certain modifying clauses which except them from such liability. The first of these clauses reads:

"It is also agreed, that the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for, or on account of any illicit or prohibited trade, or any trade in articles contraband of war."

It will be noted that this clause refers only to losses occasioned by seizure or detention due to illicit or prohibited trade, or to

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trade in articles contraband of war and does not refer to seizure or detention in general. It would also appear that there must be read into this clause "loss————which may arise———— for, or on account of any————trade in *the goods hereby insured,*" otherwise an innocent shipper might be prejudiced by the seizure and detention of his goods merely because they happened to be in the same vessel with other goods liable for seizure or detention on account of illicit, prohibited or contraband trade. Trading in contraband presupposes a state of war, but an illicit or probibited trade may exist in time of peace. Such illicit or prohibited trade refers particularly to traffic which is illegal under the laws or regulations of foreign ports. While it is legal to insure articles of trade in violation of foreign ordinances, unless such ordinances by treaty are respected by the country wherein the policy is issued, it is illegal to insure contrary to the laws of the country or state wherein the contract of insurance is made.

Abandonment.—The second of the modifying clauses reads:

"Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage."

The subject of abandonment is one which may be considered more logically in connection with the discussion of total losses. It will be sufficient at the present point to state that by an abandonment the assured transfers to the underwriter his right, title and interest in whatever remnant of property may remain after an insured peril has occurred. The underwriter receives the property, if abandonment is accepted, subject to all liens and encumbrances which may have attached to it, and subject also, to all benefits or claims against third parties arising out of ownership in such property.

Purpose of Abandonment Clause.—The primary purpose of the present clause is to make it impossible for an assured, when his vessel or cargo is taken by a belligerent, to avoid the obliga-

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tion which he owes to his underwriter to use all means to obtain the release of the vessel or cargo. He cannot consider that his property has become a total loss and abandon it to the underwriter. This is merely a further illustration of the general principle that marine insurance seeks to indemnify the assured for actual losses suffered, but does not purpose to relieve the assured of the care which a prudent uninsured owner would exercise with respect to his property under similar circumstances. Even if condemned under legal proceedings the assured agrees in this clause, not to abandon until the expiration of ninety days, from the time of notice of such condemnation is given to his underwriter. This precaution is taken in order that appeal may be made from the judgment of condemnation and that additional efforts may be made to effect the release of the insured property.

Liability for Expenses.—The underwriter also expressly warrants that he will not be liable for any expense that may be occasioned to the assured in consequence of capture, seizure, detention or blockade. Such expenses remain at the risk of the assured, notwithstanding the fact that the policy covers the peril with which such expenses are associated. The mere fact of capture, seizure, detention or blockade does not imply that the property is lost. The subject of insurance is lost and the loss is recoverable under an insurance policy only when the property is legally condemned and permanently taken from the assured. Up to this point the underwriter is only indirectly concerned, in that the preliminary seizure may result in the condemnation and loss of the property. Being thus interested it is customary for him to lend his aid and give his advice concerning ways and means of obtaining release of the insured property and thus preventing the consummation of the loss.

Liberty to Deviate in Event of Blockade.—In order that the policy may not be voided by the application of the doctrine of deviation, liberty is expressly granted for a vessel in the event of blockade, to proceed to an open port and there end the voyage. Here again the way is made clear to effect the saving of imperilled property, by providing a way of escape which will in no wise invalidate the insurance. However, a deviation made to escape the peril of blockade must be a reasonable one, the assured not

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being permitted under cover of this clause to substitute an entirely new voyage.

The Attestation Clause.—Following these modifying clauses there appears in the printed form under consideration, the attestation clause reading: "In witness whereof, the President or Vice President of the said ——— Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New York, the ——— day of ——— one thousand nine hundred and ——— " As already indicated, the policy in which both the assured and the company agree to perform certain obligations, or to refrain from committing certain acts, is signed only by the authorized agents of the Company. The assured by signing the preliminary application and by the acceptance of the formal contract as embodied in the policy assents to the obligations which the contract imposes upon him.

Memorandum Clause.—The signatures of the officers of the company do not immediately follow the attestation clause, for we find a clause headed "Memorandum" which materially modifies the contract terms and incidently gives the first intimation that the marine insurance policy is concerned with general average losses. The Memorandum clause was first introduced into London policies in 1748 and is now in one form or another a part of all cargo policies. Its consideration will be reserved for the following chapter so that it may receive the attention which its importance deserves.

Underwriter Retains Premium on Risk Unwittingly Insured After Arrival.—The last two sentences of the policy, however, may be considered at this point. The first is the complement of the phrase "lost or not lost" and reads: "If the voyage aforesaid shall have begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage." Here again we must read into the contract modifying words to the effect that the voyage has been begun and ended "without the knowledge of either party." It seems only fair that if the underwriter assumes a risk on property which at the date of the policy may have ceased to exist, as he does under the "lost or not lost" clause, then he should be entitled to retain premium on a policy

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innocently issued on a terminated risk. Were this not so, the underwriter could be held for a loss which happened prior to the date of the policy, under the "lost or not lost" clause, but would receive no premium on a risk which terminated without loss prior to the date of policy.

Résumé.—The final sentence reads: "In all cases of return of premium, in whole or in part, one-half percent upon the sum insured, is to be retained by the assurers." This provision is obsolete. Its original purpose may have been to afford the insurance company, in the event of cancellation, some remuneration for the time and expense involved in the issuance of the policy. The absurdity of this clause in modern practice will be apparent, when it is considered that in many cases, the rate premium is considerably less than one-half of one percent, and were the clause to be enforced literally, the cancellation of the policy would result not in the payment of a return premium to the assured, but in the payment of additional premium by the assured.

After entering the amount insured in both figures and words on the last line of the policy, the signatures are affixed and the document becomes a formal policy of marine insurance. The subjects which have been considered in this and the preceding chapters are merely the customary clauses which are found in all cargo policies. There is no limit to the modifying stipulations and warranties which may be added to a policy to change the printed form. In fact in many cases the modifications take more space than does the original matter. Added to these written variations, there are the implied warranties which unless waived, apply to all policies. In the following chapters consideration will be given to these modifications as they apply to policies generally and to specific forms of insurance on cargo, hull, freight and other insurable interests.

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CHAPTER 10

THE MEMORANDUM CLAUSE. IMPLIED AND EXPRESSED WARRANTIES. REPRESENTATION AND CONCEALMENT

All Goods Not Equally Susceptible to Damage.—It will have been observed that a policy form which on first reading seemed to give protection against practically all misfortunes to which property at sea may be subjected, is by interpretation more or less restricted with respect to the nature of the casualties against which it provides indemnity, and as to the minimum amount of loss for which responsibility is assumed. Notwithstanding these restrictions, underwriters early discovered that while the protection afforded might be suitable for some subjects of insurance, with respect to others it merely resulted in the underwriter assuming responsibility for losses which, although the result of insured perils, produced claims out of all proportion to the severity of the casualty suffered. In other words experience demonstrated that certain kinds of goods when exposed to sea perils deteriorate rapidly, causing unlooked-for losses which it was not prudent for an underwriter to assume. It was often difficult with such goods to determine whether in the event of a minor casualty, the consequent loss was due to the inherent qualities of the article itself or whether the deterioration was the proximate result of the casualty.

A Uniform Rate of Premium Desirable.—In the early days of marine insurance, clauses were devised which relieved underwriters of all partial loss on certain goods, and of small partial losses on other goods less susceptible to damage; the apparent purpose of this being to arrive at a basis of insurance which would make the liability under the policy on all kinds of goods as nearly equal as possible, permitting the charging of a uniform rate. Whether or not this was the primary purpose of these clauses, the fact remains that it is impractical to devise any system of insurance which will result in the underwriter assuming

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the same degree of risk, no matter what the insured subject may be.

The Memorandum Clause.—It is possible that the clauses of this nature in use in the eighteenth century were combined in 1748 when the first memorandum clause appeared in London policies. Today the clause appearing in the Lloyd's form is comparatively short, but general in its terms, whereas in the memorandum clauses found in American policies, a more specific enumeration of commodities is found. Some of the lists are exceedingly long and embrace most of the common and uncommon articles of commerce. These lists are followed by general words intended to include all other articles of the same general characteristics and susceptibility to damage which may by chance have been omitted in the specific enumeration. The memorandum clause appearing in the printed form which was considered in the previous chapters is in the following words:

Memorandum.—It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under *twenty per-cent* unless general; and sugar, flax, flax-seed and bread, are warranted by the assured free from average under *seven percent* unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under *ten percent* unless general.

Warranted by the insured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

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General Average Introduced into Marine Policy.—It will be noticed that some of the articles are by inference only insured against total loss, that is they are "free from average," while other articles considered less susceptible to damage are subject to partial loss if such partial loss amounts to twenty, seven or ten percent of the insured value. But whatever may be the percentage of damage due to partial loss which is necessary to allow a claim under the policy, one kind of loss is unrestricted and is payable irrespective of percentage. Each group of commodities ends with the words "unless general." This, the first reference in the policy to general average gives notice that losses in the nature of general average will be paid in full by the underwriter.

Excepted Risks.—The second paragraph of the memorandum clause is more modern and no words of similar import appear in the Lloyd's form of policy. It was discovered that certain commodities because of their nature readily absorbed odors which might be given off by the cargo, and in the case of extremely perishable articles their value in the market was completely destroyed. Other goods would become spotted, discolored, musty or mouldy or might be damaged merely because of moist atmosphere in the hold. Then again the vessel might leak and damage certain cargo, such as hides or skins, which would quickly begin to rot, and give off offensive odors which would penetrate the vessel and be absorbed by other articles which had not been directly affected by the casualty. Underwriters having been held liable in certain cases for such consequential loss, the clause under discussion was inserted to restrict the liability of underwriters for losses of this nature to such as are the direct result of the insured subject itself being in actual contact with sea water, the sea water obtaining entrance to the cargo through a sea peril.

The Separation of Damaged Goods.—Furthermore, the underwriter requires that, in case of damage to property which is capable of being separated into units, such segregation must be made and the assured must be content with an adjustment of the loss, in accordance with the terms and conditions of the policy, on the damaged portion only. Thus in the case of cutlery, each piece of which is ordinarily wrapped separately

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and placed in small packages which in turn are combined in a large shipping case, if the case is damaged through a peril insured against, the individual units must be separately handled, the sound separated from the damaged and claim made on only the pieces actually damaged. The underwriter of course assumes the expense of making the separation. The same procedure is required in the case of other articles which can be treated in a similar manner. The underwriter also provides in this paragraph that there shall be no liability on his part for loss of molasses or other liquids through leakage, unless such leakage is the direct result of stranding or of a collision with another vessel.

Insurance Does Not Restore Property.—It must ever be remembered, that the loss of property is an economic loss to the world. Marine insurance does not make good that loss, it merely serves to distribute the shock caused by the loss. It therefore is the duty of the assured as well as the underwriter, to use every means to preserve property from damage and to restore it when injured to a state of commercial usefulness, if such preservation or restoration can be accomplished at a cost which will result in a net economic gain. Too often it is felt that the destruction of property, if insured, is of little moment to the assured or to the public in general, the fact being lost sight of that every destruction of property of real value reduces by that amount the total wealth of the world. Compensation made by an insurance company for such loss does not create new wealth to offset the loss, it merely transfers from the underwriter to the assured a sum which has been set aside from the wealth of the world to aid the particular individual who has suffered. Thus the assured from the point of view of public policy is bound to take every precaution to prevent loss, and to minimize it if it does occur, and the underwriter is under no less obligation to insist that the assured perform his duty in this respect. Many assured have the mistaken notion that insurance relieves them of any further concern in regard to their property, entirely losing sight of the part which insurance plays in commercial life.

Implied Warranties.—While the printed and written form of policy sets forth the terms of the contract between the assured and the underwriter, this agreement is subject to what are known as implied warranties. These implied warranties are agreements

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not embodied in the terms of the policy, but read into it by law. That is, the parties to the contract agree by implication when making the insurance that certain conditions exist and that certain well-defined rules will be followed in the conduct of the voyage. These implied warranties are the result of law court decisions of the preceding centuries with respect to marine insurance policies, which decisions are in many cases merely the embodiment into legal form of the customs and usages of merchants, and become just as binding on the assured and on the underwriter as matters definitely expressed in the body of the policy.

Implied Warranty of Legal Conduct.—There is usually included in the list of implied warranties the agreement that the voyage will be legally conducted. This is not an implied warranty in the strictest sense of the word, since it is common to all contracts that the law of the land in which the agreement is made will not be contravened in the carrying out of the contract terms. The law of the land consists not only of the domestic laws of the country but also includes international law and agreements and regulations laid down in treaties to which the nation is a party. It should be noted, however, that commercial adventures during their course may come within the protection or the power of the laws of foreign governments, but it is within the rights of the assured and his underwriter to bargain in regard to a voyage or with respect to a shipment which may be made in violation of foreign edicts, and there is no implied warranty to prevent it. This so-called warranty of legality differs from all other implied warranties, in that the parties cannot mutually agree to waive the warranty and make it of no effect. The waiver of the implied warranty of legality is against public policy and will not be tolerated. Insurance which involves the illegal conduct of the assured or of the underwriter must not be confused with insurance against the illegal conduct of third parties, as in the case of barratry, theft, pirates or rovers. Such insurance is, of course, valid.

Seaworthiness.—The most important of the implied warranties is that of seaworthiness. In order that this implied warranty may be complied with, it is necessary that the vessel be properly constructed, conducted and found, for the carrying of the speci-

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fied cargo insured on the particular voyage described. Nothing is more difficult than to determine that a vessel is unseaworthy in advance of its destruction. Underwriters' surveyors may think that one boat is unseaworthy, while they may decide that another is seaworthy. The first vessel may make her passage in safety while the second may be lost. Such expressions of seaworthiness are mere matters of opinion, and while underwriters to a certain extent give weight to these opinions in forming their judgment, nevertheless they are not conclusive nor presumptive evidence of either the seaworthiness or unseaworthiness of the vessel.

Tests of Seaworthiness.—The question is a deeper one than any mere matter of opinion. Seaworthiness involves questions which a survey of the vessel may not reveal. The strength and intrinsic qualities of the material used in the construction of the vessel, the fastenings, the workmanship, the model of the vessel, the engine equipment, the fuel and food supply, the competency and experience of the master and the crew, the suitability of the vessel at the particular season of the year for carrying the particular kind of cargo in question on the proposed voyage are some of the many elements which may be involved in the question of seaworthiness. Often the best evidence of unseaworthiness is the fact that the vessel without apparent external cause is lost. Seaworthiness is a question of fact which in the last analysis can be determined only by a court of law.

No Fixed Standard of Seaworthiness.—The standard by which seaworthiness is judged is a changeable one and may vary with any particular vessel at different periods of the same voyage. A vessel might be perfectly seaworthy to load and carry a cargo while lying safely in a sheltered port. In fact it might be perfectly seaworthy to carry the cargo from a river port at which it was loading down to the open sea, but having reached the open sea be absolutely unseaworthy for the remainder of the proposed voyage. There is a different standard for every ocean, and the same measure of seaworthiness will not apply to all parts of a given ocean or to all times in the same part of the ocean. A vessel fit for Atlantic coastwise trade may be unseaworthy for trans-Atlantic trade. So, too, a vessel suitable for trans-Atlantic trade in the summer season may be an unseaworthy risk in the

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winter months. Then again a ship might be considered fit to carry a light, non-perishable trans-Atlantic cargo in the winter, and yet be absolutely unfit to carry a heavy perishable cargo over the same route at the same season. There is no fixed and predetermined standard for any particular vessel, trade or route, except in so far as the necessity of being properly constructed, conducted and found may be considered as a fixed standard.

Seaworthiness Refers to Inception of Risk.—It must be observed that the implied warranty of seaworthiness extends not alone to those qualities and defects which are apparent, but also to qualities and defects which are unknown to the assured. The implied warranty of seaworthiness refers primarily to the inception of the risk. It is the condition of the vessel at this time, judged in the light of the cargo it is to carry and the voyage upon which it is about to enter, that determines seaworthiness. If, however, the voyage is divisible into stages, and a different standard applies to each stage, then it may be that each particular portion of the risk would be separately considered. A temporary condition of unseaworthiness, will not necessarily void a policy, but may suspend the insurance only during the continuance of such condition, if the defect can be remedied at the port of departure. The risk having commenced, and the vessel being in a seaworthy condition, the happening of some fortuitous event, rendering the vessel unseaworthy will in no wise void the policy.

Implied Warranty of Seaworthiness not Applicable to Hull Time Risks.—While the doctrine of seaworthiness applies equally to cargo, freight, profit and other forms of marine insurance and to hull insurance written on the trip or voyage basis, the courts have decided that in general there is no implied warranty of seaworthiness with respect to hull insurance written on time. In England this principle is settled, but in this country there are certain exeeptions to the rule. When the exact location of a vessel is unknown because it is at sea, it is obvious that the facts on which an implied warranty of seaworthiness would depend might not be provable. There is, therefore, no ground for insisting on the implied warranty if the policy attaches when the vessel is at sea. On the other hand, there would seem to be no sufficient reason why the doctrine of seaworthiness should not apply on a time

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risk attaching while the vessel is in port. It is possible for an underwriter to make any implied warranty an expressed warranty. An expressed warranty of seaworthiness in a time hull policy would, therefore, be proper, but if the vessel were at sea at the inception of the risk, there would be great difficulty in establishing by proof its unseaworthiness.

The Waiver of Warranty of Seaworthiness.—In the days when it was usual for a shipowner to load his vessel with his own cargo, or when the cargo owner chartered a vessel to carry his goods, it seemed natural and justifiable that the warranty of seaworthiness should be read into the insurance contract. The cargo owner chose the vessel which was to carry his goods, and it was a fair presumption that he knew its condition and equipment. Now, however, with the establishment of steamship lines and with the great increase in size and carrying capacity of vessels, it is somewhat of a hardship for the cargo owner to receive insurance subject to an implied warranty of seaworthiness, when he knows little about the carrying vessel and is not in as good a position as the underwriter himself to find out about its condition and equipment. Accordingly it is not unusual to find in cargo policies a clause reading: "Seaworthiness of the vessel as between the assured and the underwriter is hereby admitted." This clause in no way waives the implied agreement between the assured and the carrier that the latter will furnish a seaworthy vessel, and the underwriter under his right of subrogation will, in the event of loss being paid, receive the assured's right of action against the carrier if the implied agreement is not performed.

Implied Warranty of Seaworthiness Refers to Vessel, Not to Cargo.—In this connection it is interesting to note that there is no implied warranty of seaworthiness with respect to the cargo itself, the warranty runs only against the vessel. Many cargoes may be shipped in such bad condition that it may imperil the ship. Thus in the case of soft coal which heats readily, or in the case of improperly cured vegetable fibre such as hemp, which is subject to spontaneous combustion, the mere shipping of such cargo would not void the policy, but the underwriter would not be liable for loss by fire if it could be established that the assured while aware of the condition of the cargo when shipped, never-

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theless negligently permitted its loading in such condition. Nor would he be liable if it could be shown that the fire was due to the inherent qualities of the cargo itself. It will be observed that a breach of the implied warranty of seaworthiness goes to the root of the policy itself and voids the whole transaction, whereas losses which may overtake the cargo on account of its condition or inherent qualities are the only ones from which the underwriter is exonerated, other perils insured against remaining at his risk.

Proof of Breach of Warranty of Seaworthiness.—While it is true that the implied warranty of seaworthiness is the most important and far reaching of all the implied warranties, it is equally true that it is more difficult to prove a breach of this warranty than it is to prove the breach of the others. Some cases readily demonstrate a condition of unseaworthiness, as when a vessel shortly after leaving port, founders in clear weather and a calm sea. But in the vast majority of cases there is some disturbed condition of the sea or of the elements existing at the time the vessel is lost, and to prove that the loss was due to the unseaworthiness of the vessel and not solely to the unusual action of the forces of nature on a seaworthy vessel is a matter of no little difficulty. The safe rule for the underwriter to follow is to insure only by vessels which he is reasonably sure are fit for the proposed work, and not to insure doubtful vessels and then rely on the breach of an implied warranty to make void the policy and prevent the collection of a loss. It is imprudent for an underwriter to state that a vessel is unseaworthy, even if he believes such to be the case, as the owner of the vessel may sue him for damages occasioned by the publication of such adverse opinion, and the underwriter may be unable to establish in defense, that his opinion was justified by the existing facts.

Implied Warranty of Prompt Attachment of Risk.—There is in all policies, except those written on time, an implied warranty that the risk will attach within a reasonable time. The insurance does not necessarily attach from the time the policy is issued. It may relate to a prospective voyage. Nevertheless, in the absence of specific information to the contrary the underwriter is justified in assuming and usually does assume that the proposed venture will commence with due dispatch. The reasons for the

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rule are obvious. It has already been suggested that the measure of risk existing in a given port or over a named route is not the same at all seasons of the year, and an underwriter in taking a risk has in mind and bases his rate of premium on the conditions existing or likely to exist at or about the time the hazard is accepted. If, for instance, an assured places in the month of August a risk on a vessel to sail from Montreal to Europe the underwriter who assumes the risk, has in mind the hazards existing in the port of Montreal and in the river and Gulf of St. Lawrence during the month of August. If, however, the sailing is delayed by the assured until the latter part of November, when conditions with respect to navigation in these waters are becoming extra hazardous, a different risk has been substituted for the one the underwriter assumed and he should be and is relieved by law from the execution of his contract. Then again, an assured, obtaining insurance on a cargo, may for some market reason or otherwise, delay the sailing of the vessel after the loading is completed, thus imposing on the underwriter a longer and different risk from the one contemplated by him when the risk was assumed. Under such a state of facts the underwriter will be relieved of his obligation.

Delay Must be Unreasonable to Void Contract.—Of course, in all such cases, the test of whether or not the delay incurred is sufficient to void the contract, is the reasonableness or unreasonableness of the delay. This is a question of fact determined in the light of all the circumstances surrounding the case. If the delay is the result of interference or other overt act on the part of the assured a clearer and more easily determined case is found than where such delay is solely the result of the action of others or because of circumstances over which the assured had no control. This warranty is one which works justice to both assured and underwriter. On the one hand the assured is not prevented from arranging his insurance in advance of the attachment of the risk, on the other hand, the underwriter cannot be led unwittingly into assuming a risk different from or greater than the one to be presumed from conditions which exist at the time the risk is taken or are apt to exist in the immediate future.

Implied Warranty of "No Deviation."—Closely connected with the implied agreement that the voyage will be commenced within

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a reasonable time, is the implied warranty that there shall be no deviation. The doctrine of "no deviation" has already been considered. No further discussion is here necessary except to reiterate that the assured, after the risk has once attached, cannot substitute a different risk, no matter how slight the difference may be or whether or not the substituted risk involves a greater or less hazard than did the original voyage, save only in the case of excusable deviation. This doctrine is merely the statement in specific form of the general legal principle that a formal contract cannot be varied without the mutual consent of the parties to the contract.

Other Implied Warranties.—The foregoing are the principal implied warranties, although included under this head are sometimes found implied conditions such as: "that the assured shall have an insurable interest," "that the assured shall not be guilty of negligence" and "that the assured shall make a full disclosure of all the pertinent facts in connection with the risk," all of which are more in the nature of conditions which must exist in order to have a valid contract, than warranties the breach of which will void the contract. Formerly there seems to have been an implied warranty of neutral character and conduct of the voyage, but owing to conflicting authority in regard to this question it is best to insist on an expressed warranty of neutrality, if the underwriter wishes to avoid liability for a breach of neutrality.

Breach of Warranty May be Excused.—As has already been suggested the underwriter may agree to waive any of the implied warranties except that of legal conduct, or he may insist on making the implied warranty an expressed condition in the policy. Furthermore he may excuse the breach of any of the implied warranties since all of them are read into the policy by law as a measure of protection to the underwriter, which protection he is at liberty to claim or not as he may choose.

Expressed Warranties.—As the breach of one of the implied warranties, unless excusable, will void the policy from the date of the breach, so the failure to observe the conditions of an expressed warranty will also void it. Thus expressed warranties are of the same nature as implied warranties, but are different in their form and origin. The implied warranties are read into the policy by law, the expressed warranties are written into the

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policy by the intention of the parties. The implied warranties are few in number, the expressed warranties are without number and may relate to any matter whether it be vital to the contract or not. Expressed warranties must be strictly and it may be said literally complied with.

Warranties and Stipulations.—An expressed warranty may relate to a present, past or future condition. It is a written agreement that certain facts are or were or shall be true, or that certain acts have been or shall be done. It is not essential that the word "warranted" be used, it is sufficient that there be an allegation of a fact relating to the risk. Thus the expression "American Ship Atlas" is an expressed warranty that the Ship Atlas is under the American flag. So, too, the statement that a vessel is in port on a named day is a warranty of that fact. On the contrary it must not be inferred merely because the word "warranted" is used in a clause that the expression is an expressed warranty. Thus the common clauses appearing in policies such as "warranted free of particular average," "warranted free of capture, seizure, etc.," are not expressed warranties, but merely stipulations in regard to the extent of the underwriter's liability. This will be apparent when it is considered that if such clauses were expressed warranties, the happening of a partial loss, or the mere fact of a capture or seizure taking place would absolutely void the policy.

Expressed Warranties Usually Relate to Material Conditions.—Expressed warranties may relate to any matter whether material or not if the underwriter insists on the warranty and the assured is willing to have the validity of the insurance depend on a strict compliance with it. As a matter of practice, however, expressed warranties are only inserted in regard to matters of really vital concern with respect to the contract. Thus expressed warranties relative to sailing are often inserted in policies since much depends on the particular period during which a risk is exposed to sea perils. Warranties are also inserted agreeing to the classification of the vessel in one of the classification societies. If such class cannot be obtained the insurance will not attach. Warranties in regard to loading are also found, as for instance that a vessel will not load more than a certain percentage of her cargo on deck, or that her loading will be in conformity with the rules

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of a certain Underwriters' Board. There are many warranties in regard to war insurance, such as those of neutral ownership and consignment, or warranties of convoy. Underwriters usually insert only warranties relating to matters under the control of the assured or within the knowledge of the assured.

Representation, Misrepresentation and Concealment.—Marine insurance being founded on the fullest good faith between the contracting parties, it is not surprising that we find many decisions relating to marine insurance which refer to what are known as representations, misrepresentations and concealments. Phillips in his work on marine insurance defines these words as follows:

SECTION 524.—A representation in insurance is the communication of a fact, or the making of a statement, by one of the parties to a contract of insurance to the other in reference to a proposal for their entering into the contract, tending to influence his estimate of the character and degree of the risk to be insured against. To constitute a representation, says Mr. C. J. Marshall, there should be an affirmation or denial of some fact, or an allegation which plainly leads the mind to an inference of a fact.

SECTION 525.—A fact or statement having such tendency is called a *material* fact or statement. One having no such tendency is called *immaterial.*

SECTION 529.—A misrepresentation is a false representation of a material fact, by one of the parties to the other, tending directly to induce the other to enter into the contract, or to do so on terms less favorable to himself, when he otherwise might not do so, or might demand terms more favorable to himself.

SECTION 531.—Concealment in insurance is where, in reference to a negotiation therefor, one party suppresses, or neglects to communicate to the other, a material fact, which, if communicated, would tend directly to prevent the other from entering into the contract, or to induce him to demand terms more favorable to himself; and which is known, or presumed to be so, to the party not disclosing it, and is not known, or presumed to be so, to the other.

The Avoidance of Contracts—Fraud.—These quotations give in brief and lucid terms the underlying conditions with respect to these three important elements in the negotiation of insurance contracts. If through the exercise of representations, misrepresentations or concealments the underwriter or the assured is induced to enter into a contract which is different from that

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which, under the circumstances, he was justified in supposing it to be, the law will relieve him of the burden of the agreement on the ground that the minds of the contracting parties did not meet, and that, therefore, there could be no contract. It is not necessary that representations, misrepresentations or concealments be made with fraudulent intent, the mere fact that certain conditions are represented or misrepresented or concealed and exercise an improper influence, is sufficient to exonerate the offended party from his contractual obligations. The law of representations, misrepresentations and concealments applies not only to direct insurance but is of equal force and effect in the case of reinsurance.

What Must be Disclosed.—All material information whether the result of knowledge or rumor should be disclosed. Thus, if the assured has heard that the vessel by which he desires insurance has met with a disaster, however slight, he must disclose this information to the underwriter. So too the underwriter if he knows or has reason to believe that the vessel has completed the voyage on which insurance is desired he must inform the assured of such knowledge or information. A misrepresentation or concealment made by an agent without the knowledge or consent of the principal is binding on the principal. In this manner an insurance broker may prejudice the position of his principal. It has been held that a material representation by the assured through misconstruction of information is a misrepresentation and that unwittingly omitting to state a material fact is a concealment.

The Effect of a Representation.—A representation differs from an expressed warranty in that a literal compliance with the representation is not essential. It is enough that there be a material compliance with the conditions represented. However, a literal but not a substantial compliance is not enough. A representation continues to be binding until it is revoked. All material facts must be revealed and it is wise to reveal all apparently immaterial facts which have a bearing on the risk as the underwriter may consider such facts of greater weight than does the assured. The underwriter is at liberty to ask any question in regard to the risk which he sees fit, whether the question seem material or not. Oftentimes questions which

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seem trivial are asked by an underwriter merely as test questions, if he suspects that the assured or his agent is withholding material information. As it is the underwriter's capital which is to be put at risk, it is proper for him to endeavor to obtain any information which he considers necessary, in order to determine whether the risk is one which he cares to insure, and if he does, to decide what rate is adequate to compensate for the protection to be afforded.

Certain Facts Need Not be Disclosed.—There are, of course, limitations to the extent to which the disclosure of material facts is necessary. The assured is not bound to disclose facts which are matters of common knowledge. Thus, it is not necessary to disclose usages of trade common to risks similar to the one under consideration, nevertheless if there are conditions peculiar to the particular risk but not matters of common knowledge they must be disclosed. The assured need not state that other underwriters have declined the risk, although the underwriter might consider this an important fact. However, if the assured states that other underwriters have accepted part of the risk at a certain rate the assured will be bound by such representation. If by the statements of the assured, the underwriter is put on inquiry and fails to investigate further into the matter, he will be bound by the policy.

What A Representation Implies.—A representation is construed according to the ordinary meaning which the words imply and the natural inferences drawn from such representation are presumed to be implied. Thus, if the assured states that a vessel was in a certain port on a certain day, it will be presumed that the vessel was there and in good safety at some time during that day. A representation is, however, to be construed in its ordinary sense, and an unusual meaning cannot be read into the words. The mere statement by the assured of an expectation, opinion, or belief must be distinguished from a representation of a definite fact or condition. If the assured states a fact in regard to a risk in such manner that the underwriter naturally infers a meaning different from the true meaning it is a misrepresentation. So too if the assured willfully and fraudulently omits to learn material facts, such action amounts to a concealment.

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Fraud.—The subject of fraud is closely connected with that of representation, misrepresentation and concealment. While these latter conditions may exist through an innocent mistake or through ignorance on the part of the assured, it often happens that the withholding of information or the giving of incorrect or misleading information is intentional on the part of the assured or his agent. If it can be proved that fraud exists the policy will be void from its inception as the minds of the contracting parties cannot be considered to have met. On the other hand if the giving or withholding of material information has been the result of an innocent mistake, the policy will be effected only with respect to consequences arising from such innocent action.

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CHAPTER 11

CARGO INSURANCE AS AN UNDERWRITING PROBLEM

Basic Form of Policy Necessary.—The consideration of marine insurance up to this point has been theoretical. The basic form of policy common to all branches of the business has been analyzed, but little consideration has been given to the practical application of the underlying principles governing the practice of this particular branch of the insurance science. While it is necessary that there be a basic form of contract adaptable to all the particular forms of marine insurance, it is equally necessary, since this branch of insurance is concerned in transactions involving all types of vessels, all kinds of commodities and all parts of the civilized and uncivilized world, that the form be sufficiently elastic to accommodate itself to the peculiar problems and the individual conditions that surround each particular venture. That the basic form is admirably adapted for this purpose has been adequately demonstrated by its continued use during the long period in which the commerce of the world has been developing. Many times, it is true, the basic form is buried under a mass of modifying clauses, but out of the apparent confusion of words, a definite and understandable contract of indemnity appears.

Cargo, Hull and Freight Insurance.—Marine insurance may be divided into three general sections namely, cargo, hull and freight insurance. The practice of insurance as applied to each of these three great branches of maritime commerce is so different that they must be considered separately. In point of volume cargo insurance stands preëminent. The ordinary cargo risk being of comparatively short duration, an underwriter's capital employed in cargo insurance is turned over many times in a single year. Then again in a single venture there will be but one vessel, and ordinarily but one freight interest, but if the vessel be a general cargo-ship there may be hundreds of cargo interests involving many different kinds of goods all exposed to

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the same general hazards, but each presenting its special peculiarities as an underwriting problem. In discussing the great interest of cargo it will be best, in the first place to treat it as a general problem and then to give special consideration to individual cargo interests.

General and Full Cargoes.—In general, cargo insurance may be divided into two broad classes, the one relating to general cargoes and the other to cargoes consisting of a single commodity usually in bulk form and commonly referred to as full cargo business. The general cargo is one consisting of a variety of commodities shipped by one or by many merchants, while the full cargo consists of a single commodity which is usually shipped in its entirety by one merchant, or may be made up from the property of several shippers. A vessel taking on a general cargo ordinarily loads at the berth, as it is known, and accepts any cargo which may be offered for the ports for which the vessel is destined. On the other hand full cargoes are ordinarily loaded under charter, where the entire capacity of the vessel is hired out to one merchant, who for the time being controls the use of the ship.

Under and On Deck Cargoes.—Cargo insurance may again be subdivided into *under* and *on deck* cargoes. Under deck cargo includes all goods loaded below the main deck of the vessel, on deck cargo in its strictest sense referring to all goods loaded above this deck whether under cover or not. By custom all cargo stowed below the weather deck is considered to be under deck cargo, as it is no more exposed to the elements than is cargo in the hold. Theoretically on deck cargo is not covered unless specifically mentioned as being on deck—practically certain cargoes from their very nature or from the custom of trade put an underwriter on inquiry to know whether or not all or part of such cargo is on deck. Thus, sulphuric acid—because of its hazardous nature—is shipped only on deck, while a full cargo of lumber in the ordinary case presupposes a part of the shipment on deck, as usually a vessel loaded with lumber will not be in proper trim unless a considerable portion of the cargo is on deck.

A General Knowledge of all Commodities Essential.—Each particular commodity has its own peculiarities and a full knowledge of all is essential in order that proper consideration may be given to each. Some raw products are shipped in their original

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condition while others are put through a preliminary process before shipment. Some commodities are shipped in bulk, while others are forwarded in packages or wrappers of some kind. The same commodity coming from two different parts of the world will present two entirely different types of risk. Thus cotton exported from the United States is usually shipped in a very poor package, the bale being improperly protected by burlap with the result that it is apt to arrive at destination in bad condition. On the other hand cotton exported from Egypt is in a smaller bale perfectly protected by burlap and in the usual course will arrive in perfect condition. So we find that rubber shipped from Brazil is in chunks while the same commodity imported from the Far East is partially refined, fashioned into slabs and carefully packed in cases. It, therefore, is not enough that the underwriter know that the risk offered to him is cotton or rubber, he must be able to look behind the mere commodity and know its peculiarities, its physical condition, and the nature of its shipping package.

Marine Insurance Conforms to Trade Customs.—But this is not all. Marine insurance does not as a rule create new conditions. Marine underwriters may and do strive to improve local conditions, but they adapt their form of protection to the customs of the country, the usages of the trade and the physical conditions existing in the various parts of the world. Thus if the custom of the trade or of the country is that goods are sold to exporters at the farm or the plantation, insurance will be furnished to attach at the farm or plantation. If on the other hand the raw commodity is brought to the ports and sold there, insurance will be furnished attaching at the port. Thus it will be found that in the raw cotton business of our own country the marine underwriter furnishes protection from the moment the cotton is ginned and weighed, whereas in the exporting of grain the marine underwriter assumes no risk until the grain is actually waterborne. Each particular trade has its peculiar customs and the marine underwriter conforms to them so far as prudent underwriting will permit. An underwriter is presumed to know the ordinary customs of trade or if he does not is at least put on inquiry as to what these customs are.

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Methods of Shipment Controlled by Physical Environment.—The customs of trade are in part controlled by the physical environment. Therefore the methods of shipment at deep water ports which are fed by a fertile and well-developed hinterland will be entirely different from those at shallow and unprotected ports where access to the interior is difficult or where the back country is not fertile or is a desert. Thus we find that at the North Atlantic ports of the United States raw commodities are partially processed before export, iron for instance not being shipped as ore, but after being partially refined and converted into pigs. This is true of most of the products of the mines. The products of the forests are converted into commercial lumber before being shipped. The products of the farm are in some instances shipped in their natural condition as in the case of grains, while perishable commodities are processed in order to preserve them and insure safe carriage. The country back of these ports is well wooded making possible the shipping of manufactured goods in substantial packages, and the means of transportation to the ports is such that the commodities may be expected to arrive at the ports in good condition.

Knowledge of Trade Customs Important.—On the other hand if we turn to the Pacific ports of South America we find an entirely different environment resulting in customs of trade that present a wholly new problem to the underwriter. Manufacturing is not developed along this coast, with the result that we find the raw products of the mines shipped in the form of ore, shipments of copper ore and of nitrate constituting a considerable part of the export trade. These commodities are brought from the mines to the shore, where they are taken by lighters to the steamers, which on account of the conformation of the coastline are compelled to lie in open or partially sheltered roadsteads to receive their cargoes. Imports are handled in much the same way, being exposed to risks peculiar to the locality. The route into the interior is in many cases extremely hazardous involving as it does carriage by rail, by water, by wagon or by mule. Often property is transhipped or transferred from one mode of conveyance to another several times, before the final destination is reached. Conditions are, of course, improving in these newer and less-developed parts of the world and the underwriter must

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keep himself fully informed of progress made or of hazards increased through some local disturbance or through the neglect of some decadent government.

Racial Characteristics Affect Marine Insurance.—In every country the natural environment and the peculiar national characteristics of the people have developed customs that show their influence on the commercial activities of the people and on their modes of conducting their business enterprises. Marine insurance is in no sense provincial. It is as cosmopolitan as any business can be, and as has already been indicated is essential to the life and growth of the race. But this very fact makes necessary on the part of the underwriter a knowledge of these racial characteristics and customs. An underwriter can if he will, limit his business to routes of trade between the highly civilized nations, but if he is to fulfil his true mission he must be content to assume risks in all trades, making his rates in harmony with the degree of hazard which each particular trade involves. Some races are noted for their low commercial ethics and the moral hazard in such trade is naturally great. Other races have a high sense of commercial honor and integrity and trading with these races involves merely a consideration of the physical hazards involved. It is in this respect that underwriter organizations have done much to raise the standard of commercial ethics. Their representatives in foreign ports have insisted on a degree of honesty in connection with transactions involving damaged property, which has presented to the native peoples an entirely new standard of business ethics. Even today some nations have not progressed much beyond the original theory that might makes right and that possession is better evidence of ownership than is any legal title to property.

Sale of Goods at Port of Refuge.—Among some races and in some ports there is found a sense of clannishness and a desire to band together to outwit and despoil the foreigner, which has no little bearing on the fortunes of marine underwriters. Casualties happen in all places and the master of a vessel in distress cannot always choose his port of refuge. It will, therefore, happen in many cases where goods arrive at a port of refuge in such condition that they must be sold to prevent their total destruction, that the local merchants will come to an understanding one with

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another that when the goods are offered for sale in the open market or at auction there will be no competitive bidding, or bidding of the most perfunctory sort only, so that the goods will have to be sacrificed. After this worthy end has been attained distribution of the goods will be made among the merchants and another commercial victory over the foreigner will be recorded. These conditions cannot be avoided and the rates over such commercial routes will naturally reflect the increased hazards involved.

Effect of Vessel Types on Cargo Insurance.—The problem of cargo insurance is one involving not only the character of the goods themselves and the routes of trade, but, like all other maritime ventures, is also vitally concerned with the carrying vessel. From the earliest days of overseas commerce ships have been designed primarily as cargo carriers, and the story of the evolution of the modern steamer is largely the story of progress in designing ocean carriers which would cheaply and safely transport cargo. To this end various types of vessels have been designed, each type endeavoring to meet in a special way some particular or general need which has developed in overseas commerce. Thus there are single, double and multiple deck vessels, bulk carriers, tank vessels, refrigerator steamers and many other types having special merits in connection with special trades. However, it is not always possible to find employment for vessels in the particular trade for which they are best adapted and vessels may seek and find employment in trades to which they are not altogether suited. Herein lies the underwriter's chief problem with respect to the type of vessel. Perishable cargoes which can conveniently be carried in a double or multiple deck vessel, because this type provides safe storage without undue crushing, are sometimes of necessity laden in deep single deck vessels, where the packages are subject to the severe crushing force of the cargo piled upon them resulting, in the event of the stress of weather, in heavy damage claims. Then again vessels used in heavy cargo trades, such as the carrying of coal and ore, and not fitted for the transportation of perishable goods are sometimes used in such trade with resultant damage to the cargo. The past four years have witnessed the employment in various trades of vessels poorly suited for the needs of such employment with consequent damage to cargoes.

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Vessel Speed an Element in Cargo Insurance.—The underwriter of cargo insurance is concerned not only with the vessel as a cargo carrier and its particular fitness for the carriage of the particular kind of goods under consideration, but also in the speed, size and general structural condition of the vessel. As a rule rates of premium in any particular class of business are predicated on vessels known as liners which have been specially designed and equipped for trade over the particular route in question. These vessels have considerable speed, are of a design suited to the needs of the particular trade and of a size proper for the safe navigation of the harbors to be visited on the route in question. Any departure from this standard presents a risk varying from the basis upon which the minimum rate has been predicated. A vessel of slower speed will involve a longer exposure to the hazards of the sea. One of different internal construction may expose the cargo to unforeseen perils, while a vessel larger in size than the ports of call will readily accommodate, involves possible strandings or unusual lighterage risks.

Structural Design in Its Relation to Cargo.—The structural design of a vessel has a material bearing upon the degree of hazard involved in an insurance of the cargo. In the event of a stranding, a double bottom vessel is less apt to damage cargo. A vessel equipped with several watertight bulkheads is a better cargo risk than one without bulkheads not only in the event of collision but also in case the vessel takes fire. Steamers of the well deck design have a tendency to damage cargoes through leakage owing to the great weight of water which in rough seas may fall with crushing force in the well of the deck, sometimes forcing water through the hatches or through the openings in the surrounding deck erections. Furthermore, unless this type of vessel is designed to quickly discharge the water, the stability of the vessel may be seriously affected, especially if it be heavily loaded. A twin screw steamer also has manifest advantages over the single screw type.

Natural Forces as Related to Cargo Insurance.—Reference has already been made in some detail to the natural forces in and about the ocean and of the physical topography not only of the ocean bed but of the continental shores and of the harbors. This theoretical knowledge must be applied practically in the

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consideration of individual risks. The underwriter must carefully consider the route to be followed by the shipment for which insurance is desired. Questions relating to these physical conditions will naturally present themselves to his mind. If the insurance offered relates to a voyage to or through the West India Islands the underwriter will consider the time of the year, as the hurricane season brings increased perils on this route. So the approach of winter on the Great Lakes or in the St. Lawrence River will naturally call attention to the increased hazards which this period involves in Lake and St. Lawrence River trade. The ice floes of the North Atlantic in the Spring and early Summer will not be overlooked by the careful underwriter nor will he forget the long nights involving increased perils in the Baltic trade in the Winter months. The fact that the proposed voyage is through the inside passages to Alaska will recall to the underwriter's mind that this route is poorly charted and lighted and therefore extra hazardous, and he will not overlook the fact that at certain seasons of the year fog makes navigation dangerous off the coast of Newfoundland and other similarly situated localities.

Optional Routes.—The length of the route is also of importance to the cargo underwriter, the time involved, for instance, in going to Australia via the Panama Canal being less than when the Cape of Good Hope route is used. So the opening of new canals providing shorter routes may greatly affect the degree of hazard to which a risk may be exposed. However, it must be observed that a shorter route does not necessarily mean a safer route. For instance, some underwriters consider the trip from New York to Boston through the Cape Cod Canal a more dangerous route owing to the currents in the Canal than the longer route outside Cape Cod. The short route will ordinarily be used if commercially it effects a saving in the cost of operating the carrying vessel, yet such decrease in the length of the voyage may materially increase the hazards from the underwriting viewpoint. The distance travelled is relatively of small importance in the consideration of underwriting problems.

Other Elements in Cargo Insurance.—The question of valuation must be given proper consideration and the amount of liability which the underwriter is willing to assume on the par-

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ticular risk will be determined by the sum which he desires to retain and the amount which he knows or has reason to expect he can reinsure on equal or better terms. The question of the assured himself, whether principal or agent, and the general character and reputation of the various persons involved in the proposed venture will all be given their due weight in the consideration of each individual risk. While to the experienced underwriter the consideration of all these questions to which reference has been made and of many others of perhaps equal importance, becomes a matter of intuition or habit, the enumeration of some of these questions and the problems involved in them will give to the student of marine insurance some conception of the fund of information and the keenness of judgment with which a competent underwriter must be endowed.

Average Conditions.—Up to this point no reference has been made to one of the most vital elements in the discussion of cargo insurance. This is the question of average conditions. In considering the policy form it was observed that the blank provided for a payment of loss, only if it amounted to five per cent, while in the memorandum clause further restrictions were added relative to the percentage of loss for which the underwriter would respond. In determining the rate of premium to be charged much depends on the degree of average which the underwriter is asked to assume or is willing to accept. Herein knowledge of the inherent qualities of each individual commodity is all important. The memorandum clause does not attempt to enumerate all articles and the restrictions regarding average therein set forth with respect to many commodities, is unduly burdensome to the assured. To make commodities free of average unless general, or in other words to insure only against total losses and general average claims, ignores completely the many partial losses, the direct result of the major sea casualties, *i.e.*, stranding, sinking, burning and collision.

Free of Particular Average.—It is therefore but natural that while the underwriter is unwilling to assume liability for ordinary partial losses due to the peculiar qualities of the particular article or to its form of package, he is content to bear partial losses, the direct result of stranding, sinking, burning or collision. Accordingly the so-called F.P.A. (Free of particular average)

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clause is adopted and this in its various forms is now the most used clause in the entire field of marine underwriting. Basically it has two forms: one, known as the "F.P.A.E.C.," or Free of Particular Average English Conditions clause, the other the "F.P.A.A.C." or Free of Particular Average American Conditions clause. These two forms being somewhat different in their application, a word of explanation will be proper in order to point out the distinction between them.

American and English Average Clauses Contrasted.—The American form of clause commonly used reads: "Free of particular average unless caused by stranding, sinking, burning or collision with another vessel." The underwriter thus stipulates that he assumes no responsibility for partial loss, unless such partial loss is proximately caused by one of the enumerated casualties. On the other hand, the English form of the clause in its simplest form reads: "Free of particular average unless the vessel or craft be stranded, sunk, burnt or in collision." Thus as in the American form, the underwriter stipulates that he shall be free from liability from partial loss in the ordinary case, but he agrees that the mere happening of one of the enumerated perils will nullify the average agreement, the policy then and thereafter being subject to the printed form with its specified average conditions. Thus the underwriter under the F.P.A.E.C. clause assumes liability in accordance with the terms and conditions of the policy for any partial loss that may appear after the happening of one of the enumerated casualties, whether or not such partial loss is the result, directly or indirectly, of such casualty. The mere technical happening of the casualty has divested the underwriter of all the protection which the clause afforded.

The Effect of the F.P.A.E.C. Clause.—It is unfortunate that the English conditions clause should have received the interpretation which the courts have given it, as it doubtless was originally intended that the meaning should be what the American clause clearly stipulates, namely, that the resultant partial loss must be the proximate result of the named casualty. The dominating position occupied by the English marine insurance market heretofore, has resulted in the English conditions clause being generally used in the American market to the practical ex-

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clusion of the simpler and more logical American form. The English clause introduces an element of speculation into marine insurance which will be shown by the following illustration. A vessel containing a cargo of general merchandise insured on F.P.A.E.C. terms from New York to Sydney, Australia, in going out of the port of New York strands on the channel bank, remains fast for a few minutes or a few hours as the case may be, but with the rising tide floats free, and absolutely uninjured proceeds on her journey. The cargo has not been disturbed or injured in any respect, yet because the vessel was stranded, the exception provided in the F.P.A.E.C. clause has been fulfilled and the goods are thereafter insured subject to the printed form of policy. Later in the voyage, through stress of weather, the decks open and water is admitted to the hold damaging the cargo. Under the insurance on F.P.A.E.C. terms this loss, if amounting to the percentage required by the printed form, will be recoverable, although the loss resulting from the leakage through the decks was not caused by either stranding, sinking, burning or collision. Under the American form the underwriter would not be liable for this loss. It will thus be seen that it is quite possible for a cargo owner who owns or controls the vessel to obtain "subject to average" insurance at "free of average" rates, by insuring on F.P.A.E.C. terms, and then through collusion with the master arrange for a technical happening of one of the excepted casualties so that the policy thereafter will be subject to average.

F.P.A.E.C. Clause Illogical.—A more pronounced illustration of the illogical working of the F.P.A.E.C. clause will appear from the following example. A vessel fully loaded with a cargo insured on F.P.A.E.C. terms, during the course of her voyage meets with heavy weather, her seams open, considerable water is shipped and the cargo is damaged approximately ninety per-cent. The vessel, however, makes her port of destination and the owners of the cargo face a heavy loss which because of the F.P.A.E.C. conditions cannot be recovered from the underwriters, none of the excepted casualties having occurred. However, when approaching her berth the vessel is run into by another vessel but does not suffer much damage through the collision. Nevertheless, the collision voids the average warranty and the cargo insurance automatically becomes subject to average, and

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the underwriters become liable for the particular average loss which had previously occurred through the leaking of the vessel.

Amended F.P.A.E.C. Forms.—These two cases will demonstrate that the use of the F.P.A.E.C. clause introduces an element of speculation into marine insurance transactions. In order to avoid the consequences of the legal interpretation which was given to this clause, amendments have been made from time to time in its wording in order to lessen the possibility of claims being made which are not proximately caused by casualty, and to provide for the payment of losses, which, while fortuitous in their nature and not in any way caused by the inherent qualities of the articles themselves, would not be recoverable under the original F.P.A.E.C. form. In the last revision of the Institute (London) Cargo Clauses (F.P.A.) 1917 in paragraph number 8 we find the F.P.A. clause expressed in the following words, viz.:

"Warranted free from particular average unless the vessel or craft be stranded, sunk, or burnt, but the Assurers are to pay the insured value of any package or packages which may be totally lost in loading, transhipment or discharge, also any loss of or damage to the interest insured which may reasonably be attributed to fire, collision or contact of the vessel and/or craft, and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at a port of distress, also to pay landing, warehousing, forwarding and special charges if incurred."

Stranding and Sinking.—Many cases have come into the courts for the interpretation of the meaning of the words "stranded, sunk or burnt" as used in the F.P.A. clause, in order to determine the degree of casualty necessary to nullify the free of average warranty. The consensus of these decisions seems to be that to constitute a stranding there must be such a taking of the bottom as results in the complete stoppage of the movement of the vessel, and not merely what is known as "touch-and-go," where the vessel comes in contact with the bottom but does not actually lose her momentum, merely sliding off the obstruction and proceeding on her course. So a sinking must be an actual immersion of the vessel in the water, although it is not necessary that the vessel sink to a point where it is completely submerged or where it rests on the ocean bed. For example, a vessel laden with lumber will sink, but will not go

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to the bottom, remaining partially immersed and partly out of the water because of being in a water-logged condition. Such partial immersion, however, is a sinking.

Burning and Collision.—Burning has also been a mooted question and it has been decided that in order to have such a burning as will void the free of average warranty there must be an actual destruction of a portion of the ship. It may happen that a severe fire occurs in the cargo without doing any material damage to the ship itself, so that a strict construction of the word burnt would prevent the recovery of the loss on cargo. To avoid this possibility it will be noticed that the F.P.A. (1917) clause quoted above provides that loss of or damage to the interest insured reasonably attributable to fire is recoverable. It will also be observed that collision is omitted in this form from the list of excepted casualties. Collisions often result in little or no damage to the ship or cargo, but as already pointed out a harmless collision might under the original F.P.A.E.C. form admit claim for prior or subsequent damage in no way attributable to the collision. On the other hand the omission of this casualty altogether, might work injustice, in that a collision while of little consequence to the ship itself might, through the admission of some water, result in serious damage to the cargo. Underwriters have, therefore, assumed liability for any loss or damage which may be reasonably attributed to collision or to contact of the vessel with any external substance (ice included), other than water; the exception in regard to water being made because a vessel normally is always in contact with water.

Other Casualties.—Furthermore, packages are often lost in loading, transhipment or discharge, and this risk is also covered, notwithstanding the free of average warranty. Liability is also admitted for expenses which may be incurred after the abandonment of the voyage, by the discharge of the cargo at a port of distress, or other charges which may result from the landing, warehousing and forwarding of the cargo as the result of conditions which make it impossible for the vessel to fulfill her contract of carriage and yet have not resulted through any of the excepted casualties.

Duration of Risk.—In determining the rate of premium to be charged in cargo insurance it is also important to consider

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how great is the risk to be run not only from the geographical point of view but also from a consideration of the length of time during which the commodity will be at the risk of the underwriter. This naturally leads to a further consideration of the warehouse to warehouse clause which is one of the most used clauses in cargo underwriting. This clause in the form most commonly used, that of the London Institute, reads:

"Including (subject to the terms of the policy) all risks covered by this policy from shippers' or manufacturers' warehouse until on board the vessel, during transhipment if any, and from the vessel whilst on quays, wharves or in sheds during the ordinary course of transit until safely deposited in consignees' or other warehouse at destination named in policy."

This clause while providing a broad form of protection covers property only while out of the custody of the owner, during transit in the ordinary course from warehouse to warehouse. In the ordinary conditions of overseas commerce this form of protection is usually sufficient for the assured. With the congestion which war occasions at practically all ports, however, the unusual delay to which shipments are subjected raises the question of what "ordinary course of transit" as used in the warehouse clause means. It seems clear that these words must be interpreted in the light of existing conditions, "ordinary course of transit" during a state of war having a totally different meaning from what it has under normal conditions. On the other hand it cannot be presumed that if shipments are left on the wharf week after week while steamers sail for the port of destination of the goods, that the goods are still in ordinary course of transit, notwithstanding the fact that the unusual delay occasioned is without the knowledge or consent of the owners of the goods.

Rate of Premium Based on Ordinary Transit.—The underwriter in fixing the rate of premium is presumed to have made the charge adequate to cover usual delay under existing conditions, but should not and will not be held to have provided protection if the usual delay is converted into unusual detention. Banks and shippers may require additional protection to provide for the contingency of unusual delay and various clauses are

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devised extending the warehouse to warehouse clause, to cover such a contingency. The great difficulty from the viewpoint of the underwriter, is to establish some basis for determining the premium to be charged, which will be adequate to compensate him for the increased hazard assumed and yet will not involve a system for calculating the time of detention so expensive in operation as to cost more than the additional premium charged.

Cargo Clauses are Numberless.—The clauses used in connection with cargo insurance are numberless, referring as they do to every possible phase of the cargo underwriting problem. A few, however, such as the warehouse to warehouse clause, the craft clause providing for lighterage risks from the shore to the vessel and from the vessel to the shore and the deviation clause to which reference was made in an earlier chapter are common to most cargo insurances. Other clauses have been devised primarily for special trades or for use in relation to certain ocean routes. A few of these clauses will be considered in the following chapter in connection with the discussion of insurance on specific commodities.

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CHAPTER 12

SPECIFIC CARGO RISKS

Full Cargo Business.—To enumerate and classify, from an underwriting standpoint, all the commodities which are the subject of cargo insurance would be a well-nigh endless task and one far beyond the scope of this treatise. It is possible, however, to indicate several broad headings under which commodities may be grouped and to give a brief description of the forms of insurance granted on some of the principal commodities in each group. Before doing this, however, it will be well to give some consideration to the peculiar hazards in connection with full cargo business. A full cargo may consist of any kind of goods, although it is more usual to find vessels so loaded with raw or bulk commodities.

A Seasonal Business—Congestion Hazard.—As a rule, full cargo business is seasonal and is confined at any given season to relatively few ports. For instance in the movement of the United States cotton crop, the Southern ports of the country are involved principally during the latter part of each year. The business centering in a few ports near the cotton producing areas, leads to congestion and the wharves and the streets in the neighborhood of the wharfs become filled with cotton, inadequately protected from the elements and subject to conflagration hazard. Such congestion, while not peculiar to the cotton business, becomes more important in the movement of this crop, because it is customary for the marine underwriter to assume the interior fire and transit risks in the insurance of raw cotton. Similar congested conditions will be found in the movement of raw sugar, coffee, grain, hemp and burlaps, but the congestion risks in these trades is apt to result in losses largely due to hasty and careless handling which causes damage to the commodity itself. Thus vessels may load in the rain causing to a perishable cargo damage for which an underwriter will have difficulty denying liability if the insurance is subject to average. An underwriter ordinarily is not liable for fresh water

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damage, but it is not always possible to prove that damage found on goods is due to fresh and not to sea water.

Overloading of Vessels.—In these seasonal trades there is usually a scarcity of tonnage with the inevitable result that there is a tendency to overload vessels, unless careful inspection is maintained by underwriters. The question of loading, therefore, assumes great importance and underwriters' boards have laid down rules in certain cases prescribing approved methods of stowage, to which vessels must conform in order to obtain insurance. This is peculiarly true in the grain business. This commodity, because of its tendency to shift, becomes an extra hazardous risk unless proper stowage is obtained. In the case of lighter cargoes where it is impossible to overload a vessel with the commodity itself, a condition of instability may result owing to the vessel being top heavy. It is, therefore, usual to carry in the bottom of the holds of such vessels, ore or metals or other heavy materials in order to lower the center of gravity and thus increase the meta-center height. There is also the tendency to carry on such vessels, heavy deck loads of timber, or it may be high deck loads of the commodity itself, this condition being especially true in the raw cotton trade. These deck cargoes are often poorly stowed, or improperly secured, proving a menace to the under deck cargo because of the fact that part of the deck load may be lost, causing the vessel to get out of trim. Such cargoes greatly increase the fire hazard, owing to the difficulty of gaining access to the under deck cargo.

Unfit Vessels Used to Carry Full Cargoes.—The scarcity of tonnage in these seasonal trades also calls into service many vessels not fitted for the cargoes to be carried. We thus find that in the raw sugar trade from Cuba to the United States and in the export grain trade, vessels physically unfit for carrying these exceedingly perishable commodities are offered for charter. Such vessels, either because of their design or because of their age and physical condition are not fit to withstand the hazards of the trade. The result is that often such vessels, encountering heavy weather will leak, causing enormous damage to perishable cargoes. The effect of water on these perishable bulk cargoes, whether it obtains entrance because of the weakness of the ship, or through a casualty, is very great. These cargoes,

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consisting as they usually do of vegetable products, may, as in the case of sugar, rapidly dissolve, or as in the case of grain swell and tend to burst the ship, thus causing further damage and perhaps the loss of the whole venture. Sometimes the tendency is to quickly soften and rot and become unsalable, as is the case with flaxseed and beans and many of the vegetable fibers.

Fire Hazard.—The fire hazard is of no little importance in the full cargo business, especially in connection with commodities which are apt to heat. Proper ventilation is, therefore, of the utmost importance in these trades. Soft coal when carried on long voyages is very apt to take fire unless the holds can be cooled during the voyage. This can most easily be done by removing the hatches during fine weather. However, if the cargo is already on fire and smoldering, the admission of fresh air with the opening of the hatches will probably result in the cargo bursting into flames. In the case of vegetable fibers, which ordinarily are carried long distances through the torrid zones, the danger of fire from improperly cured fiber is very great. The fire hazard is also serious in the case of cotton. If cotton is shipped wet it may heat in the hold and spontaneous combustion result, but more often cotton fires, which are very common on shipboard, are due to sparks lodging in the bales during loading, caused it may be by stevedores smoking or by the hitting of the metal straps of the bales on the steel hatch combings during the stowage of the cotton. There being much air in a cotton bale the spark will live for many days, gradually eating its way into the bale and eventually causing the bale to take fire, it may be after the vessel is many days on her voyage.

Classes of Cargo.—Cargo insurance may be broadly divided into classes, each class containing those commodities which have a common point of origin. Thus we may group together the products of agriculture, of animals, of forests, of mines, or of manufactures. It does not follow, however, that because two commodities fall into the same class the risk on each is the same from an underwriting standpoint. It will be of interest to briefly consider some of the commodities in each group.

Products of Agriculture.—The products of agriculture, both in bulk and in value, form one of the largest classes of cargo risks. This is true in large part because the raw commodity is grown

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principally in countries or in sections of a country which are not given to manufacturing. The raw product must be transported from the place of origin to the place of manufacture or consumption. This fact, coupled with the nature of the commodity itself determines in large measure the conditions under which insurance protection is afforded.

Sweat Damage. Skimmings Clause.—Cocoa and coffee beans constitute a considerable portion of the exports of some tropical regions. Both commodities are easily damaged and by preference are insured by underwriters on free of particular average terms. However, their susceptibility to damage through no fault of packing, but because of their transfer by water from a warm to a cool climate, has led to the granting of insurance against what is known as sweat damage. There is always a certain amount of moisture in the hold of a vessel. The vessel loads her cargo of cocoa or coffee in bags at a tropical port, closes her hatches and proceeds on the voyage. As the cooler waters of the temperate zone are reached the sides of the ship cool causing condensation of the moisture in the hold and, if the cargo is not properly dunnaged and protected, water will reach it causing sweat damage, which, under extreme conditions, may affect a considerable portion of the cargo. It is also usual to insure cocoa and coffee under what is called the "Skimmings clause." In this clause the underwriter assumes liability for all partial loss through the bags being wet or stained by salt water, the coffee or cocoa affected being skimmed off and the damage assessed on the portion so segregated.

Raw Cotton.—Reference has already been made to raw cotton. This commodity is grown in our own Southern States, in China, Egypt, India, Peru and in limited quantities in some other parts of the world. The fiber is baled, but the condition of the bale varies in different countries, the wrapping of the American cotton bale being but another example of inexcusable waste on the part of the American people. So poorly is American cotton baled that the delicate staple is not sufficiently protected from the elements and from the soil and stain which inevitably accumulates during the handling and transit of the commodity. The result is that the bales arrive abroad badly damaged through these causes and the consignees claim allowance for the damaged

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staple. Unfortunately underwriters have assumed liability for this damage, called *country damage*, with the result that there has not been the same incentive to better bale protection and more careful handling that there would have been had the loss fallen on the shippers or consignees. Furthermore, in some European cities quite a thriving business has developed in the adjustment of country damage claims and in the reconditioning of the bales, so that no great degree of pressure has been exerted on the shippers to provide a better package. At the opening of a new world era, when conservation is the ringing cry in every line of endeavor it would seem that efforts could successfully be made to end an abuse which is a reflection on the business methods of the American people. It is true that a measure of progress has been made in the better compression of the cotton under the Webb system, but much remains to be done before a package is produced that can compare favorably with the Egyptian cotton bale. Underwriters have also endeavored to remedy this condition by agreeing to return part of the premium charged for covering country damage if the claims for this character of loss should be reduced below a certain percentage of the premium charged. This effort has not been without success as many merchants have been induced, through the saving in premium effected, to use greater care in the protection of the bales.

Schedule Rating.—The insurance of cotton is peculiar not only in that country damage losses are covered, but also in that the insurance covers the ginned cotton from the time it is weighed at the towns adjacent to the farms where the staple is grown. The insurance protection continues from this point until the cotton is delivered at the warehouse or mill of the consignee in Europe, China, Japan, India, or wherever the raw product is manufactured into cloth or other cotton products. The insured cotton is not in continuous transit. It is carried from places of purchase to concentration points where the bale is recompressed and reconditioned and the cotton is sorted into the various grades and made into lots to fill the requirements of sales made by the owners. Schedule rating so common in fire insurance and so unusual in marine insurance finds its nearest approach in the rate tariffs in use in the raw cotton trade. The various factors of fire risk in different locations, flood risk, transit

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risk by rail, by steamer and by lighter, also country damage risk and special port risks are all factors in determining the rate charged.

Grain Cargoes.—The insurance of grain cargoes presents one of the most interesting and most hazardous classes of risks in connection with cargo underwriting. Grain being small in size and of smooth skin, has a tendency to flow and no little difficulty is experienced in stowing such cargoes so that the vessel will be stable when it sails and continue in that condition regardless of the weather encountered at sea. Various sets of rules have been formulated by government boards and by underwriters' boards, all having as their aim the fitting of vessels internally so that grain cargoes cannot shift. In general these rules provide for shifting boards, a temporary longitudinal bulkhead so fitted as to divide each hold into two smaller holds. The grain is fed into the holds, properly spread, and boards are laid upon the grain and on top of these are placed several tiers of grain in bags to prevent the movement of the cargo. In the case of double-deck vessels wing feeders are often required, these feeders being bins of considerable size, which with the rolling of the vessel and the possible movement of the cargo, feed down into the hold grain which will take the place of that shifted and restore the vessel to a condition of stability. Other rules are made respecting the loading of the old style self-trimming vessels, the turret and the trunk deck types. A perusal of these rules will throw much light on the difficulties encountered in the proper stowage of bulk grain cargoes.

Standard Clauses.—Grain, being a very perishable commodity, is usually insured on free of average terms. When shipped in bags and thus in a measure protected it may be insured subject to average. The subject of grain insurance in the export trade is so important that the London and American Institutes acting in conjunction with the London Corn Trade Association have promulgated standard clauses under which export grain, from the United States to the United Kingdom and the Continent of Europe, is insured. The principal part of this clause relates to the subject of average, the protection afforded by the original free of particular average English conditions clause having been greatly broadened.

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Hard and Soft Grains.—It is important to notice that from the underwriting viewpoint some grains are more hazardous than others. The harder cereals, such as wheat and rye, are much better risks than are corn and flaxseed, which because of their softness will, in the event of damage, rapidly spoil and become worthless. It is, in fact, exceedingly difficult to ship corn at certain seasons of the year without the cargo arriving at destination in a very deteriorated condition. While it is true that grain is insured on free of average terms, it is equally true that if one of the excepted casualties occurs and the underwriter becomes liable for average he is then affected by all the inherent qualities of the commodity. It also happens in the case of some grains, such as flaxseed, for which there is ordinarily a limited market, that a comparatively slight damage the outcome of a casualty, may result in considerable loss owing to the lack of a market for this particular grain at the port of refuge. It is often not possible to either recondition grain at a port of refuge or carry the cargo forward to destination in its damaged condition and a forced sale is necessary.

Vegetable Fibers.—The fibrous commodities, of which hemp, sisal and jute comprise the chief examples, are also exceedingly perishable in their nature and are usually insured free of average. In the jute trade special clauses have been promulgated by mutual agreement between the merchants and the underwriters. Fire is one of the chief hazards encountered in this trade, it often being of spontaneous origin. This fact is difficult to prove with the result that the loss usually falls on the underwriter. When jute takes fire, the blaze is exceedingly difficult to extinguish, as the fire smolders, and after it is apparently out, the jute will again burst into flame.

Raw Sugar.—Raw sugar is also a very perishable cargo but the principal cause of loss with this commodity is water. Being very soluble the admission of water to the hold will quickly result in serious damage. Sugar is usually insured subject to average, the minimum average payable depending in large measure on the length of risk. In the Cuban-American sugar trade the franchise is very low, the underwriter assuming liability for loss amounting to $100, whereas in the Java-American trade the underwriter may insist on a minimum average of $750. In

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the Cuban and Porto Rican sugar trades which are the most important in the American market, cargoes are insured subject to the Loss in Weight or the Loss in Test clause or both. Under the Loss in Weight clause the underwriter adjusts the loss considering merely the actual reduction in weight as shown by the invoice weights and the outturn weights, an allowance of two percent being made for the absorption of moisture. On the other hand in an adjustment under the Loss in Test clause the percentage of damage suffered as shown by comparing the sound and damaged values, is applied to the insured value of the damaged sugar and thus the loss is determined.

Fruits and Vegetables.—There are many other products of agriculture, such as fresh fruits and vegetables for instance, which are a considerable item in marine insurance. These commodities are usually of so perishable a nature that they are insured free of particular average absolutely, although when shipped in refrigerated compartments it is usual to cover partial loss in the event of the breakdown of the refrigerating apparatus, providing such breakdown continues a certain number of days or hours. The transportation of apples from America to the United Kingdom is one phase of the fruit trade which involves enormous values when trans-Atlantic trade is normal. Likewise, the carriages of bananas, pineapples and other tropical fruits from the West Indies and Central America to United States ports is so important that lines of steamers especially designed for this trade are, during ordinary times, in constant operation between these ports.

Products of Animals.—The insurance of animal products is an important feature of marine underwriting. With the discovery of improved methods for the curing and preserving of animal products and with the perfecting of refrigerating machinery which permits the carriage of fresh and frozen meats for thousands of miles in perfect condition, a new and important field for marine underwriting came into being. The insurance of the cured and preserved animal products is not an extra hazardous class of risk, as the commodity is usually well packed and not easily damaged and is accordingly insured on very favorable terms. In fact packing-house products, excluding fresh and frozen meats and the by-products of the packing plants, are usually insured subject

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to three percent average on each package. Some of the animal oils and greases which under moderate heat turn into oil are very hazardous, if the risk of leakage is covered. The degree of risk involved in leakage insurance is dependent largely on the season of the year and the normal temperature of the route over which the cargo will pass and of the port of destination. The more heat to which these oils and greases are subjected the more fluid they become and the greater the likelihood of leakage resulting.

Canned and Bottled Goods. Dairy Products.—Canned and bottled goods whether vegetable or animal products are ordinarily insured free of average, partially because of the effect of moisture on the tin container and partially because of the expense of reconditioning the container, whether tin or glass, in the event of damage. Relabeling is usually necessary even if the damage is slight, resulting in expense oftentimes out of all proportion to the actual damage suffered. Dairy products, particularly butter and cheese are also insured free of average because of their susceptibility to damage and their tendency to spoil if slightly damaged, while eggs are usually insured free of claim for loss by breakage, and otherwise free of particular average.

Refrigerated Goods.—Fresh and frozen meats when insured subject to average and subject to loss occasioned by the breakdown of the refrigerating apparatus present one of the most hazardous risks in the whole realm of cargo insurance. The industry is of the greatest importance, especially in connection with the importation of these products into the United Kingdom from the United States, South America, South Africa and Australia. When it is considered that a commodity that will quickly spoil has to be carried a distance of from three to ten thousand miles over routes that in many cases pass through the very hottest portions of the ocean, some conception will be gained of the hazards involved in this form of insurance. Not many years ago a fine refrigerator steamer loaded with a valuable cargo of fresh and frozen meats took fire while on the way from Australia to the United Kingdom and was compelled to enter Dakar, West Africa, a port very nearly on the equator. The fire was extinguished but the refrigerating apparatus in one hold containing frozen mutton was so damaged that it was useless.

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The mutton in this hold quickly spoiled and had to be jettisoned resulting in a very serious loss to the underwriters.

Dressed Meats.—Dressed meats are usually shipped either chilled or frozen. Chilled meat is kept at a temperature approximating 40°, cool enough to prevent decomposition and yet not cold enough to freeze the meat. Frozen meat on the other hand is frozen solid before shipment and is kept at a temperature of about 28°. In the event of breakdown of the refrigerating plant the spoilage in the case of frozen meat is much more rapid than it is with chilled meat. Ordinarily beef is shipped chilled, while mutton, poultry, rabbits and the smaller pieces of meat are shipped frozen. The hazard of fresh and frozen meat insurance is further increased in many cases by the assumption of the risk from the moment the meat enters the cooling or freezing chambers of the packing plant and continues during transportation and for a period not exceeding sixty days after arrival at destination. The risk prior to shipment on the ocean going steamer is also limited to sixty days. This is the broadest form of cover granted in this trade, though there are many lesser forms of insurance in use. In fact the London Institute has promulgated at least twenty different clauses relating to the insurance of fresh and frozen meats. The insurance of these commodities is practically controlled by the London market, as the United Kingdom and the Continental countries are more interested in this business, since the United States is self-supporting in the matter of meat supplies. Shortly before the commencement of the World War, however, efforts were made to import fresh and frozen meats from the Argentine and much of the insurance on these shipments was placed in the American market, though it was generally insured in accordance with the London Institute Clauses.

Livestock.—The shipment of live stock is in normal times a subject of considerable importance in the insurance market. In this trade several kinds of insurance are afforded ranging from that which assumes liability for only the absolute total loss of the vessel and her cargo including the livestock insured, to insurance under full mortality conditions where the underwriter assumes liability for the death of the animals, however caused, provided they were shipped in sound and healthy condition. Such insurance may terminate on the deposit of the animals on shore,

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no liability being assumed for any animal walking ashore regardless of its physical condition or the risk may continue for a fixed period, say five days after the animals are landed. During this period animals greatly affected by the sea voyage often die and the underwriter assumes liability for this loss. The degree of hazard in the insurance of livestock is dependent largely on the nature and temperament of the animals. Thus sheep are more susceptible to pneumonia than are cattle, this disease often being the cause of death during transit. Horses being more high spirited than cattle often become terrified in a storm, doing injury to themselves or to other animals. Mules on the other hand being phlegmatic in temperament and not readily susceptible to disease are in this very hazardous class comparatively a safe risk.

Hides and Skins.—The shipment of hides and skins is a very important trade in the products of animals and is very hazardous in its nature. Hides and skins are usually shipped in a partially finished state, that is they are not processed to the point where they are ready for use in the industries. Ordinarily two methods of preparation are used in preparing the raw material for shipment. The hides and skins may be cured and dried, tied into bales or bundles and shipped, or they may be pickled and shipped in casks. Under either method an extra hazardous commodity is offered for insurance, for in the case of the wet salted skins if the brine runs off they will rapidly deteriorate, while if the dried hides are wet they will quickly rot. In the event of a casualty the loss is usually large and if the disaster happens far from a market or from a place where the commodity can be reconditioned, the danger of a total loss is great. Furs are also a hazardous cargo, but because of their greater value they are more carefully packed and are less apt to sustain damage.

Raw Silk.—Before passing from the consideration of the products of animals mention may be made of raw silk, a commodity because of its high value furnishing no little volume of insurance. Its great value has, however, resulted in this commodity being so finely packed and so carefully handled in shipment that it is one of the best risks in the whole field of marine underwriting. Although very susceptible to injury, it is so packed that it cannot be damaged readily, unless a serious

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casualty occurs. It is usually shipped in well prepared bales or may be imported in tin-lined cases and is usually carried on the very finest vessels operating from the silk ports.

Products of the Forest.—Among the products of the forest rubber and gum take a leading place. These commodities rank high as desirable subjects of insurance, being little susceptible to damage. In the last ten years the growth in the shipment of crude rubber from the tropical countries to the manufacturing centers of the world has been little short of marvelous. Improved methods of processing the crude rubber have permitted its use in many lines of industry and the supply is hardly equal to the demand. Other gums also form a considerable part of the commerce of certain ports. The shipment of rosin and turpentine is of no little importance in the trade of certain of our own Southern ports.

Wood Cargoes.—The insurance of the products of the forest in the form of logs, timber and lumber usually involves the subject of on deck cargoes. Ordinarily these cargoes are light and buoyant and in order to get the vessel in proper trim it is necessary to carry part of the cargo on deck. While the rough logs and large timbers are not very susceptible to damage, the sawed and finished lumber may be considerably lessened in value through stain or through damage in handling. So, too, in the matter of salvage, while most of these products will float and, therefore, cannot readily be lost, the expense of handling the smaller pieces of finished lumber often makes salvage operations impracticable. The fact that these cargoes are carried on deck, has an important bearing on the risk as a whole, as the shifting or loss of a part or the whole of the deck cargo may result in the loss of the entire venture. The shipment of the roots and bark of forest trees is also an important part of overseas commerce, these commodities being extensively used in the arts, in medicine and in industry, a considerable part of our dyestuffs being produced from forest products.

Products of the Mines.—The products of mines afford two of the extremes in the degree of risk which they offer to the underwriter. Metals such as copper and tin in pigs stand at the head of the list of commodities which offer little or no risk except that of total loss, while salt is about as poor a subject of insurance

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as the whole field affords. Here again the nature of the commodity is the important factor, soluble minerals being bad risks while the insoluble are in the very highest class. The demand for the precious and semi-precious metals in the arts and industries is very great. In the case of the baser metals such as tin, copper and iron which are produced in great abundance in certain countries, but are scarcely to be found in others, an enormous overseas trade has developed. These commodities are usually insured free of particular average. However, in the event of casualty occurring, unless it be a sinking to a depth where salvage operations are impracticable, the metals are practically uninjured and the attendant loss is merely the salvage and reconditioning expenses. Under similar conditions the soluble minerals such as salt and nitrates would probably become a total loss.

Coal and Ore.—Coal is one of the most important and essential commodities in overseas trade. Being a rough dirty cargo it is not shipped in the best vessels, except in cases where vessels are specially designed for this trade. For this reason the risk on coal is usually great. The commodity itself, however, is a satisfactory subject of insurance, especially the harder grades of coal. The softer coal such as the bituminous, the English and the Indian coal, when shipped on long voyages on poorly ventilated ships, presents a dangerous fire hazard because of its tendency to heat. The shipment of bulk ores is in about the same class as coal. The greatest danger with all of these heavy cargoes is the possibility of the vessel being overloaded or improperly loaded thus affecting its stability. It requires no little degree of skill to so load these cargoes that they will not shift and that the vessel will not be unduly stiff.

Products of Manufacturing.—The insurance of products of manufacturing affords the most diversified field in marine underwriting. Any individual consideration of these commodities is impracticable in this work, but the field embraces articles which present practically every problem with which marine underwriting is concerned. The business as a rule is general cargo business, that is, vessels carrying manufactured goods will be loaded with many different products, including articles little susceptible to damage and those that are extremely perishable,

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together with commodities presenting all the intermediate degrees of hazard. Here the trite saying that the marine underwriter must know "everything about something," that is his own business, and "something about everything" has its most complete illustration, in that the underwriter is called upon to decide under what conditions he will insure any given commodity, and upon the correctness of his judgment depends the success of his underwriting. Truly in marine underwriting "a *little* knowledge is a dangerous thing."

Diversity of Risk.—Mention may be made of a few manufactured articles merely to show the wide diversity of risk which this field offers. Cement has of late years become an important article of commerce. This risk is exceedingly hazardous owing to the fact that the addition of water turns the cement into stone, resulting in a total loss. Cases have occurred where cement becoming wet in the hold of a vessel has turned into stone and the only way of removing the mass has been by dynamite. Wheat flour on the other hand which like cement is a fine powder and is usually shipped in bags is one of the best insurance risks, because of the fact that when wet the flour near the bag forms a paste which protects the rest of the contents. The chief danger with flour is its tendency to spoil or to become grubby, risks which the marine underwriter, of course, excludes. Otherwise, it is not unusual for the underwriter to assume "all risks" on flour.

Machinery.—Machinery is an interesting subject of insurance because of the fact that in most cases the breakage or loss of one small part of a machine will render useless the whole. Accordingly underwriters have devised machinery clauses of various kinds, the underlying principle of all being that in the event of loss the underwriter merely assumes liability for the part lost or broken and for the expense attending its replacement.

Burlaps and Bags. Fire Hazard.—Burlaps and bags also present peculiar hazards and are important because of the great quantities of these articles which are shipped. Fire is one of the great hazards in this trade, while the damage caused by water staining the bales is also one of considerable importance. The manufactures of petroleum especially the volatile oils also present a serious fire hazard and in the case of oils which are shipped in

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tins packed in wooden cases the loss by leakage through the rusting of the tins is very considerable, especially in the event of a casualty.

Leakage and Breakage.—The subject of leakage and breakage in connection with the insurance of manufactured articles is an important one. While the policy in its original form does not assume liability for ordinary leakage or ordinary breakage, the exigencies of business require that in many cases these risks be assumed by the underwriter. This is, of course, an extra hazardous form of insurance and the successful underwriting of these risks depends in large measure in preparing clauses in which the burden of assuming usual leakage or breakage losses is thrown on the assured. The underwriter becomes responsible for only those losses which because of their degree indicate that the commodity has been subjected to some unusual condition. The rate of premium for these forms of insurance depends in large measure on the article itself and the nature of its package. In the case of leakage the heaviness of the oil or liquid and its tendency to thin and become more fluid under heat is an important feature. It must be remembered that a package that leaks at all will, if the voyage is long enough, probably result in a total loss of the contents, and under the pressure to which cargo is subjected in the hold of a vessel during the voyage the probability of strain on the package is very great. Breakage even in larger measure is dependent on the commodity and its package. Small articles well packed will usually carry without breakage, and if breakage occurs the loss will not be total but will probably involve only a few of the articles in the package. On the other hand, large single articles such as statuary and plate glass if broken at all, usually result in a total loss, and it is almost impossible to name a rate within reason which is adequate to recoup an underwriter for losses sustained in insuring breakage on such articles. Such insurance is as a rule a matter of accommodation in connection with the general business of a merchant and the underwriter does not expect that this particular portion of the business will pay for itself.

Common Carriers' Insurance.—Of late years an important cargo business has developed in the insurance of common carriers. The legal liability of ocean carriers is not very great in view of

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the beneficial legislation which has been enacted in their favor such as the "Harter Act" (see appendix, p. 417) and other laws curtailing the liability which the common law imposes on carriers by land or water. The steamship lines, especially the coastwise and lake lines, have, however, in order to attract business offered rates of freight that include insurance, or have offered to shippers their facilities in the procuring of insurance on cargo transported by their vessels. The carriers have accordingly arranged policies to cover these risks often of such size that the insurance is distributed in shares among many underwriters. These policies are written either in blanket form, the carrier paying a fixed annual premium, or in floating form under which reports of risks applicable to the policy are made. As a rule these policies differ little from those issued to merchants, but the basis of valuation is ordinarily founded on what are known as commodity values. Freight rates are charged in accordance with the class into which a commodity falls, and in the valuing of cargo by the carrier for insurance purposes the same principle is used, a value per ton of weight for each class being established and reports being made and premium charged on the values thus obtained. It is usual in these policies for the underwriter to assume the legal liability of the steamer with respect to the cargo insured, so that in the event of loss the underwriter has no recourse against the vessel for losses resulting through its negligence.

Common Carriers' Liability.—In this connection it is important to note that in the insurance of cargoes, this liability of carriers is an important element in determining the rate of premium to be charged. Common carriers unless relieved by statute, are liable for all damage suffered by property in their custody unless caused by inherent vice, improper packing or the Act of God or the King's or the Government's enemies. This materially reduces the liability of the underwriter on cargo, especially on the rail lines where the liability of the carriers conforms most nearly to its original form. While the underwriter under his original form of policy is liable for these losses notwithstanding the liability of the carrier, the assured agrees in the "Sue and Labor" clause to sue, labor and travel in the defense, safeguard and recovery of the property, so that he is obligated to proceed against the carrier to recover for the loss or damage suffered before calling on his

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underwriter to pay. In order that this duty and obligation may be more perfectly established it is usual to find in cargo policies clauses which make the policy void to the extent of any liability which a carrier may have under the common law or otherwise, and which also make the policy void if there be other insurance provided by the carrier or other third person which would be valid if the policy held by the merchant had not been issued. Carriers in many cases have inserted in their bills of lading clauses to the effect that in the event of their settling a claim on cargo they shall have by assignment the benefit of any insurance on the property. Underwriters have in turn made their policies void in this respect if the assured accept a bill of lading containing such a stipulation.

Parcel Post and Registered Mail Insurance.—The subject of cargo insurance is so vast that no effort has been made to treat it in detail, the foregoing discussion merely serving to indicate some of the problems confronting the underwriter in this branch of insurance. Under the heading of cargo insurance is usually included shipments made by parcel post and registered mail, a very unsatisfactory form of insurance because of the fact that usually proper proofs of loss cannot be obtained. It is seldom known on what vessel a package is shipped and the mere fact that it does not arrive at destination is usually proof of its loss. Whether non-delivery is due to a marine loss, a fire or a theft cannot be established, the consequence being that an underwriter must charge a high rate on such shipments to provide for all possible contingencies. Shipments by registered mail are, of course, more carefully watched than are those by parcel post, and this method of transit is used in the shipment of securities and currency and other high valued commodities of small bulk.

Securities and Currency.—In the shipment of securities and currency by registered mail it is usual for the underwriter to require that the contents be counted and the package sealed by a notary public, who under his seal gives a certificate of the contents of the package. The insurance of currency is, of course, more hazardous than the insurance of securities, because the latter can usually be replaced upon the giving of proper bonds which are at the expense of the underwriter, whereas currency when lost cannot be reissued. The shipment of gold, currency and pre-

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cious bullion under bill of lading is also an important item of insurance, especially when it is necessary to ship gold from one country to another to equalize exchange rates. Such shipments are insured from bank to bank and because of the extreme care and protection afforded, offer little except a total loss hazard to the underwriter.

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CHAPTER 13

HULL INSURANCE

Classes of Hull Insurance.—Hull insurance, the second of the three general divisions of marine insurance may be subdivided into four broad groups, each characterized by the type of vessel involved, viz.: sail, auxiliary sail, steamers and power boats. These four classes may again be separated into insurance placed on trip risks and that placed on the annual or time basis. A trip insurance is one whose termini are mainly geographical; that is, a risk which is insured from one port to one or more other ports, with perhaps a continuation of the risk in the final port for a specified number of hours or days after safe arrival. On the other hand, an insurance on time, whether on the annual basis or for a shorter period is limited entirely by the date of attachment and the date of termination, except in so far as the insurance may be made void by the breach of specific trading warranties. There is no limit in this country to the time for which a policy may be written, but in England the law provides a time limit of one year, and this period is by custom adopted in this country. In rare cases a combination of the trip and time forms are found, wherein a vessel is insured for a named voyage, the total time at risk, however, to be definitely limited to a given number of days or months.

Single Vessel and Fleet Insurance.—Hull insurance may again be considered as falling into two further groups, viz.: single vessel risks and fleet insurance. Formerly single vessel risks were more common among sailing vessels than steamers. Usually single individuals or groups of men jointly owned a sailing vessel, while steam tonnage was largely developed by companies who formed steamers into fleets and operated them over certain definite routes. Now, however, in the case of steamer tonnage, the custom is growing of forming a separate corporation to own each individual vessel, the corporation usually bearing the name of the vessel as the "Olympic Steamship Corporation." Thus

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we find that even in large fleets each vessel is separately owned, although all the vessels in the fleet will be jointly operated by a corporation formed for this special purpose. The primary object in single vessel ownership is to make each vessel a unit when any question of legal liability arises, so that any judgment obtained can be executed only against the guilty vessel and not against all the vessels as would be the case if they were jointly owned. The managing corporation may charter all the vessels or it may merely load them and manage their operation.

Single Vessel Risks.—As a rule single vessel risks from an underwriting standpoint merit a higher rate of premium than do vessels insured jointly as a fleet whether separately owned or not. The reason for this is obvious. A single vessel risk is rated on its own merits. It stands or falls by itself. If well built and in good condition and owned by persons whose record as ship operators or owners is good, it will be favorably considered. If badly built and in poor condition, with the further handicap of poor ownership it will either not be insured, or if insured by some venturesome underwriter, the policy will carry a high rate of premium.

Fleet Insurance.—Fleet insurance, on the other hand, presents a very different problem. As a rule, the formation of fleets is a gradual process. New vessels are added from time to time, with the result that in a fleet there are usually found new vessels and old vessels, good vessels and those that are not so good. Considered as separate units an underwriter would be favorably disposed to insure the newer and better vessels, but would hesitate to accept lines on the older and inferior vessels. In writing fleet insurance, however, the underwriter as a rule cannot pick and choose, but must write all or none. Accordingly the underwriter accepts a percentage interest in the fleet, making a uniform rate for the whole, or as is often the case, dividing the fleet into groups in accordance with the merits of the respective vessels, and fixing a rate for each group.

Moral Hazard.—In all branches of marine insurance the question of moral hazard is important, but it is particularly vital in hull insurance. The character of the owner and the experience and ability of the manager of a single vessel or of a fleet are primary considerations in the insurance of hulls. Bad ownership or

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incompetent management means many losses, some of which may present evidence of unfair dealing. No asset is so valuable to a shipowner as his reputation. A good record will procure insurance on vessels which because of their age, for instance, would be otherwise uninsurable. On the contrary, a bad record in the owning and management of vessels which are in themselves good risks will make the procurement of insurance a difficult matter. Not only does bad management affect the procurement of insurance on the hull, but it also affects insurance on the cargo and freight. The matter of ownership and management affects not only the question of accident to vessels through errors of judgment in navigation, owing to the employment of incompetent masters and crew, but it concerns itself with the upkeep of the vessel with respect to its physical condition. A run-down vessel is a bad insurance risk from the underwriter's viewpoint, but it is also a bad risk from a financial point of view. A steamer with its delicate motive power cannot be neglected. A wooden sailing vessel cannot be neglected or its hull and rigging will deteriorate. Vessels need constant attention, and if through mismanagement an owner neglects the upkeep of his vessels, his loss record will soon reveal the fact, even if it is not otherwise discovered by the underwriters. High rates or no insurance at all will be the inevitable result.

The Value of a Vessel.—The determination of the proper valuation at which a vessel should be insured is not easy, owing to the various factors which affect the value. The amount should be fixed at the point where the owner will be fully reimbursed in the event of total loss, but will have no inducement to compass the destruction of his vessel in order to procure the insured value. Theoretically, the value of a vessel is the total of all the *net* freight which the vessel can earn during the ordinary period of such a vessel's usefulness plus its breakup value at the end of the period. Of course ,this estimated value will vary from time to time as freight rates increase or decrease with the demand for tonnage. However, as a practical matter, other considerations such as the increased cost of replacing such a vessel at the time of renewing the insurance, her increased earning power during a period of high freights, or generally the law of supply and demand are the determining factors in fixing the value of the vessel.

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It must be considered that during a period of one year the whole freight rate and vessel situation may change, and a fair value at the inception of the policy based on the then existing conditions, may before the policy expires produce a moral condition which offers temptation to the unscrupulous owner.

Valuation Should be Reasonable.—To the underwriter who is issuing full form insurance, as it is called—that is, is writing a policy covering particular average losses as well as general average and total loss risks—the valuation is vital, because his liability for partial loss is fixed by the percentage of the total value which he insures. Thus, if he does not insist on a reasonable value, and prevent by agreement the placing of an undue proportion of the value against total loss, general average and salvage charges, he will in the event of partial loss, find that he is charged with an unreasonable amount as his share of the repair bills. In order that underwriters may protect themselves in this respect it is usually warranted that only a stipulated percentage of the full value of the vessel may be placed under limited form insurance. Reference has already been made to the custom of separating the total value into parts, one applying to the hull and its fittings and another to the machinery. In some cases hull values are further divided into hull and cabin outfit, while the machinery value may be separated as in the case of refrigerated vessels, into propelling and refrigerating machinery.

Trading Warranties.—The trading warranties are also of very great importance in the insurance of hulls. Vessels when built are usually designed for some specific service, such as lake trade, coastwise trade or ocean service. If used out of these trades, weakness may develop resulting in serious losses. Accordingly, when issuing policies, underwriters by express warranty definitely indicate the geographical limits within which the vessel may operate in order not to void the insurance. These warranties range all the way from clauses limiting a vessel to service in a named port, or along a limited strip of coastline to world-wide limits permitting trade on any of the seven seas. In policies insuring vessels operating on the Great Lakes and in certain other localities a further trading warranty as to time is inserted limiting navigation to the open season.

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Institute Warranties.—The trading warranties in most general use are the American or London Institute Warranties. This clause permits practically world-wide trade, exceptions being made, however, of British North America on the Atlantic Coast except certain coaling ports and British North America on the Pacific Coast north of fifty degrees, of certain portions of the Baltic Sea and of ports on the northernmost coast of Europe. Exception is also made of trade to Behring Sea, Alaska or Siberia, except Vladivostock between May first and November first. The exceptions, it will be noted, all relate to trade in Northern or Arctic sections where navigation because of ice and fog is extra hazardous, but with certain exceptions provision is made for the cancellation of these warranties upon the payment of additional premium. A further restriction is found in these warranties prohibiting the carriage of Indian coal between March first and June thirtieth.

Loading Warranties.—Loading warranties are not uncommon in hull policies. A New York form used for sailing vessel risks prohibits the vessel from loading more than her registered under deck capacity with lead, marble, coal or iron on any one passage and also warrants that the vessel will not use any of the Guano Islands, nor load lime under deck. These loading warranties are inserted either because the cargo named is heavy and an undue quantity will imperil the safety of the vessel or because the commodity as in the case of lime is dangerous in its own nature.

Purpose of Warranties.—Obviously trading or loading warranties may be made in any form, but the object the underwriter has in mind in inserting them is to prevent the vessel proceeding under the form of policy issued and at the rate charged to other trades than that for which charge was made or for which the vessel is suited. The rate of premium depends in large measure on the trading warranties required. It is usually cheaper for the assured to restrict the trading warranties obtaining a low basic rate and then if it becomes necessary to send the vessel out of these warranties, to obtain the underwriter's assent to such extended service by the payment of an additional premium.

Average Clauses.—Average clauses in hull policies are usually either in the minimum franchise form or in the deductible average form. The item of insurance being an important one in the cost

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of operating a vessel, the assured seeks to obtain protectionat the lowest possible cost. If his experience with respect to partial loss has been favorable he may decide to assume small partial losses and thus obtain a reduced rate. It is, therefore, quite common to find in hull policies deductible average clauses. The deductible franchise will vary from five hundred dollars as in the case of the Standard Lake Hull insurance form to several hundred thousand dollars as in the case of some of the huge trans-Atlantic liners, where the procurement of full coverage is a difficult matter owing to the fact that the great value may exhaust the world's insurance market. Special inducement has to be offered to entice underwriters to write large lines and the large deductible average franchise is one of the baits offered.

Three Percent Average Clause.—As a rule the minimum franchise form of average clause is the one used in hull policies, in the case of steamers or motor vessels the franchise applying to each valuation separately or to the whole value. The franchise is usually fixed at three or five percent, but this percentage applied to a high value produces such a large sum as a minimum claim under the policy that a minimum amount in dollars is inserted such as twenty-four hundred and twenty-five dollars (five hundred pounds sterling) or forty-eight hundred and fifty dollars (one thousand pounds sterling). The average clause in most common use in steamer insurance reads:

"... this policy is warranted free from particular average under three percent, or unless amounting to $4850, but nevertheless when the vessel shall have been stranded, sunk, on fire, or in collision with any other ship or vessel, underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found."

"... Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general."

Separate Valuations.—The practical working of the separate valuation clause will appear from the following illustration. A steamer is insured on a valuation of three hundred thousand dollars, divided two hundred thousand dollars on hull and one hundred thousand dollars on machinery. The vessel encounters

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very heavy weather causing damage not only to the superstructure and the hull itself but also to the machinery. The loss on the hull when adjusted amounts to seventeen hundred and fifty dollars and on the machinery to three thousand two hundred and fifty dollars. If separate valuations were not used and there was no minimum franchise of forty-eight hundred and fifty dollars there would be no claim on the underwriters in this case as the total loss suffered is five thousand dollars whereas three percent on the total value of three hundred thousand dollars is nine thousand dollars. Under the separate valuation plan, however, there is a valid claim on the machinery, three percent on the valuation of one hundred thousand dollars being three thousand dollars and the claim on machinery as adjusted being three thousand two hundred and fifty dollars. There would, however, be no claim on the hull, three percent on this valuation being six thousand dollars and the adjustment showing a loss of only one thousand seven hundred and fifty dollars. Here, however, the minimum franchise becomes operative. The loss is adjusted on the whole value and a valid claim is proved, the total amount of loss being five thousand dollars and the minimum franchise but forty-eight hundred and fifty dollars. Were this minimum franchise not inserted and the valuations separated, shipowners would find that a three percent average clause left a very heavy burden upon them.

Thirds Off.—The separate valuation clause quoted above contains an expression in the negative, *i.e.*, "without deduction of thirds, new for old," which refers to one of the common principles of hull underwriting. This principle came into operation in the days of wooden ships and was based on the theory that in case of repairs to a vessel, the new material supplied left the vessel in better condition than before the accident and that the underwriter should not, therefore, bear the whole burden of the loss. That this theory was sound in the case of a vessel that had been in service for some time, there can be no doubt, but in the case of new vessels meeting with disaster, it is difficult to establish that the repaired vessel is a better one than it was before the disaster. Because it was impracticable to treat each case on its merits an arbitrary percentage of deduction was established and the "thirds off" clause came into use. With the introduction

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of metal as a medium for the construction of vessels, it was still more difficult to establish the fact that the new metal inserted to replace the old resulted in any improvement in the vessel, and the custom has grown as in the clause above cited of waiving this stipulation at least with respect to the steel or iron portions of the vessel.

Modified "Thirds Off" Clauses.—That the doctrine of the deduction of thirds is right in principle there can be no doubt, but that the arbitrary adoption of a fixed rate of deduction in all cases works a hardship on the assured is equally true. Many modifications of the "thirds off" clause have been made each striving to fix a scale of deductions which would be more equitable to the assured. It will be found that in some of these clauses there is a sliding scale of deduction, the amount gradually increasing with the age of the vessel. This is especially true with respect to the yellow metaling on the hull of wooden vessels. The doctrine of "thirds off" is also applied in the settling of general average losses, but here again sliding scales of deductions have been adopted in order to arrive as nearly as possible at a fair basis for the settlement of all cases.

Machinery Claims.—For many years after the introduction of steam engines as the motive power of vessels, it was doubtful whether or not the general words in the policy form reading "and all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said vessel, or any part thereof" would include losses caused by the bursting of boilers or other losses occasioned through accident to the machinery of the vessel. To definitely settle the point a test case with respect to the breakage of the air chamber of a pump operated by a donkey engine on the steamer "Inchmaree" through the apparent negligence of the crew, was taken up to the House of Lords in England. After careful consideration of the particular facts in this case and of the conflicting decisions rendered in similar cases they unanimously decided that such loss was not occasioned by a cause of the same nature as "a peril of the sea," and held that the underwriters were not liable.

Inchmaree Clause.—Following this decision, in order that protection against loss by casualties of this nature might be given to shipowners, a clause known as the "Inchmaree" clause was introduced into hull policies, which reads as follows, viz.:

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"This insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery, through the negligence of master, charterers, mariners, engineers, or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager. Masters, mates, engineers, pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer."

The clause now appears in most hull policies on vessels propelled by mechanical power, and has the effect of adding a new group of perils to those already enumerated in the printed form of policy. Its use has been unfortunate for the underwriters in connection with the new internal combustion engines with which the modern auxiliary sailing vessels are equipped, because of the fact that many machinery claims have resulted from apparent lack of knowledge on the part of the engineers charged with the operation of this comparatively new type of marine engine.

Collision Liability.—Incorporated in most hull policies there is found a clause known as the Collision or Running Down Clause which in reality is a separate liability insurance. The perils clause in the policy takes care of physical losses sustained by the vessel through collisions. There is, however, another collision liability which is concerned not with the damage sustained by the vessel itself, but the damage sustained by the vessel with which the insured vessel has collided, or by its cargo or by the passengers or crew of the vessels. It is this liability to which the Collision or Running Down clause refers. Under the law a vessel, if negligently colliding with another vessel, is liable for the resultant damage caused to the other vessel and its cargo and for loss of life or personal injury if occasioned by such negligence. This liability also extends to piers, harbor walls, breakwaters or other objects with which a vessel may negligently come into violent contact. There are various forms of collision clauses, but the form in general use (see A. H. U. A., form No. C-1, appendix, p. 373) affords protection against merely the liability for physical injury to another ship, its freight and cargo and for demurrage due to its owner for the time he is deprived of the use

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of his vessel, but only to the extent of the insured amount in the policy. The underwriter, however, assumes no liability for consequential injury to harbors, wharves, piers, stages or other similar structures, or for the removal of obstructions to navigation caused by the collision, nor for the loss of life or personal injury. The clause also excludes liability for loss of the cargo or the freight engagements of the insured vessel. The necessity of limiting liability to the proportion of the insured value which the underwriter assumes, not exceeding the face amount of the policy, will be apparent when it is considered that there is no limit to the liability of the vessel owner for losses due to negligence, all his property being subject to attachment, unless he invokes the law and obtains a limitation of liability to the value of the offending vessel in her condition after the accident. This limitation will usually be granted by the admiralty courts if it can be established that the owner personally is free from contributory negligence. This is usually so in collision cases, the negligence being due to the master, mariners or the pilot. In the United States the law permits a limitation of liability to the actual value of the offending vessel after the collision, to which is added the freight being earned on the passage. If the vessel is worth more than the claims against it the owners will keep the vessel and pay the damages, if the claims exceed the value of the vessel the owners will probably abandon the vessel to the claimants. In England the limitation of liability is fixed by law at eight pounds sterling (£8) per gross ton in the event of property damage or at seven pounds sterling (£7) per ton additional if there be loss of life or personal injury. These sums are fixed standards whether the ship be an old wooden sailing vessel or a new high speed ocean greyhound and are made regardless of the real value of the vessel per ton.

Legal Expenses in Collision Cases.—Under the Collision clause underwriters also assume responsibility for their respective proportions of the legal expenses in connection with the establishment of the liability of the owner. Provision is also made for the settlement of losses, if it should be decided that both vessels are to blame for the collision, on the principle of cross liabilities, in order to avoid a multiplicity of financial transactions. Owing to the fact that many vessels may be the property of a single

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owner and two of these vessels may come into collision, it is provided in the clause that the fact of the common ownership shall be disregarded and settlement made as if the vessels were separately owned. Provision is also made for the adjustment of the liability under this clause by arbitration, the owners appointing one arbitrator, the underwriters a second, these two arbitrators appointing a third before entering on their conference, the decision of this arbitrator or of any two of the arbitrators to be binding on all concerned.

Club Insurance.—The policy in its ordinary form does not afford protection against the liability of a vessel owner for damage to the cargo in his possession due to negligence nor for injury to persons, through acts of the owner or his agents. Neither does it provide protection against the liability, modified by exemption clauses, with which the owners are charged under the bill of lading. These liabilities are a very serious matter for vessel owners and they have accordingly formed mutual protective associations which assume these liabilities, each owner entering his vessels in the association and paying a fixed rate per ton for the protection thus afforded. The associations are sometimes called clubs and such insurance is commonly referred to as Club Insurance. These associations have been established for many years in Great Britain, but it is only recently that a Mutual Protective Association of Shipowners has been authorized by law in New York and such an organization formed.

Protection and Indemnity Clause.—The establishment of these clubs has had a direct bearing on the ordinary form of marine insurance. It was formerly the custom for underwriters to assume under the Collision Clause only three-fourths of the collision liability and to assume none whatever for loss of life or personal injury or for damage to harbors, docks, piers, nor for damage to goods on board the vessel, nor for any other liability for which the owner might be held by law. This was done on the theory that leaving one-quarter of the collision liability with the owner would make him more diligent in seeing that his vessel was carefully navigated, and that the other liabilities were not such risks as a marine underwriter should assume, because freeing the owners from these liabilities would result in less careful operation of vessels. The acceptance of these risks by the Clubs

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however removed all the supposed advantages of leaving them with the owners, with the result that underwriters were willing to assume these risks. Accordingly the three-quarter limitation is usually omitted from the Collision Clause, and the other liabilities assumed by the Clubs are sometimes insured by underwriters under Protection and Indemnity clauses as they are known. In many cases however these risks are as a matter of economy left with the Clubs, this form of insurance being inexpensive, although the members are subject to assessment. Some owners however prefer to have all their liability covered under a single policy and the "P and I" clause as it is usually called will in such cases be inserted in the policy.

Cancellation and Lay-up Return Premiums.—Reference has already been made to the basic principle of marine underwriting, namely, that the policy having attached the premium is earned regardless of the fact that through some unforeseen event, either the transfer of ownership or the loss of the vessel through a peril not insured against, the owner is divested of his property before the conclusion of the policy term, thus relieving the underwriter of a portion of his risk. Hull insurances being written as a rule for a period of a year the strict enforcement of this rule in the case of the sale of a vessel might work a hardship. Accordingly it is now customary to provide for the cancellation of the policy by mutual agreement, return premium being made at a fixed rate for each uncommenced month. It also happens in many cases that vessels will be laid up for repairs or without employment for considerable periods. The rate charged is based on a vessel in navigation, whereas during the period of repair or non-employment the vessel is in port exposed to a minimum of risk. Provision is therefore made for the payment of a return premium at a fixed rate for each consecutive period of fifteen or thirty days the vessel may be laid up in port. It should be observed however that a vessel is laid up only when it is out of commission and not engaged in the ordinary course of its employment. That is, a vessel cannot be considered as laid up, when because of the congested condition of a port it remains in the harbor for a long period in order to discharge inward cargo and to load outward shipments. Claims for lay-up returns are sometimes made under these circumstances and careful scrutiny of them is always neces-

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sary. It was formerly the usual practice that lay-up claims were not allowed when the lay up was the result of repairs which were at the expense of the underwriters. This provision is still made in some underwriters "lay-up" forms and is also found in the Standard "Lake Time Clauses" used in the insurance of vessels operating on the Great Lakes.

"And Arrival."—It will be noticed that the usual form of clause providing for lay-up returns and cancellation returns ends with the words "and arrival." Unexplained, the words appear meaningless and it would seem that an expression covering the point intended could have been devised that would at least have been intelligible to the lay mind. It has been stated that the premium is earned when the policy attaches, and that the destruction of the vessel before the expiration of the policy term will not give the assured the right to claim return premium for the unexpired time. The expression "and arrival" is a restatement of this principle. In common words it means that at the time of claiming return premium for mutual concellation or for lay-up return the vessels must have arrived, be in existence and in good safety. Return premium will not be paid if the vessel has been lost or is missing. Lay-up returns are not claimable until after the expiration of the policy and if the conditions of "and arrival" were fulfilled at the end of the policy term the mere fact of the subsequent loss of the vessel will of course in no way affect the claim for lay-up return premium.

Extension into Port.—A clause is usually found in hull policies providing that if the vessel be at sea upon the expiration of the policy term, the policy may be extended at a pro-rata monthly premium until arrival in good safety at her port of destination or at the first port of call, provided request for such extension be made prior to the expiration of the policy. Similar privilege should always be granted for extending the policy to the port of destination if the vessel be in distress, or at a port of refuge or at a port of call, the underlying idea in each case being to relieve the assured from the burden of arranging new insurance when the vessel is at sea or when it is in a disabled or damaged condition.

General Average.—Reference is frequently made in hull policies to the subject of general average, provision being made that these charges as well as salvage charges shall be payable in ac-

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cordance with the York-Antwerp Rules, 1890, if so provided in the contract of affreightment. It is also provided that in cases where these rules do not apply that adjustment shall be made in accordance with the laws of the United States. The York-Antwerp Rules are considered in connection with the subject of general average. This body of rules was adopted at an International Conference and seeks to establish a uniform practice in regard to general average and salvage adjustments. Similar clauses referring to the York-Antwerp Rules appear in many cargo policies.

"Total Loss Only" Insurance.—It is quite customary for owners, through desire or from necessity, to insure vessels on what is known as the "total loss only" form. This form is frequently used in the insurance of vessels which because of their condition cannot be written at favorable rates on a full cover form. It is also usual to cover disbursements and excess values on the total loss only form. In some cases this form of protection is broadened to include general average and salvage charges in addition to total and constructive total losses. When the value of vessels is high, difficulty is often experienced in obtaining sufficient full cover insurance and the final lines are accordingly placed on "total loss only" form. However, in order that the use of such insurance shall not be abused at the expense of the full form underwriters, clauses have been devised limiting the percentage of the total amount which may be placed on the total loss form. In many cases owing to very high values these warranties are waived and a larger percentage of "total loss only" insurance is permitted.

Port Risk Insurance.—When vessels are laid up in port for long periods of time undergoing repairs or reconstruction or without employment, it is usual to place insurance on a "port risk only" form. Under this form of policy the assured often warrants that the vessel is laid up and out of commission and that the vessel will be confined during the term of the policy to the limits of the port described. Privilege is granted for the vessel to change docks or to go on drydock in order to make repairs or alterations. The Collision Clause and the "Inchmaree" clauses are usually incorporated and it is sometimes agreed that average will be payable without reference to percentage, that is the average clause does not require that any fixed franchise be attained to

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make a claim under the policy. As there are no navigation hazards in connection with port risk insurance, except during docking and changing docks, the rate of premium is low. It is charged on a monthly basis or at an annual rate usually subject to cancellation in accordance with the short rate tables. These tables provide for a premium charge for the actual time at risk which is calculated not as a pro rata portion of the annual rate, but at a fixed percentage of the annual rate. The short rate is always higher than the pro rata charge for the same period.

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CHAPTER 14

SPECIAL POLICY FORMS FOR THE INSURANCE OF HULLS

Special Hull Forms.—Special forms are quite an important feature in connection with hull insurance. These are not peculiar to any one Company, but have been formulated by underwriters' organizations and adopted by the individual companies in the issuance of their policies. The best talent in the underwriting field has lent its aid in the construction of these forms, and the primary idea underlying all has been to offer to the vessel owner the most complete protection consistent with conservative underwriting principles. From time to time these forms are amended as new situations develop requiring a broadened form of protection, or underwriting experience suggests a more restricted form of policy. Previously the use of many different forms in hull underwriting led to confusion and difficulty in the making of adjustments. In cargo insurance, except in the case of very large accounts, one underwriter will assume the whole risk reducing his line if he considers it necessary, by the procurement of reinsurance. In hull underwriting, on the other hand, it has always been customary to have several underwriters on a single risk, hence the desirability of having uniformity among the policies issued by the different underwriters.

Work of the Hull Associations.—The American Hull Underwriters' Association has stood in the forefront in endeavoring to procure uniform standards of hull insurance, and they have promulgated forms which are now in general use in this country. Working in close harmony with similar associations on the Pacific Coast and in Great Britain, certain forms have been drawn up which are practically standard in all the underwriting markets of the world. Forms for steamer risks, auxiliary sailing vessels, port risks and builders' risks have been recommended for use by this organization. Similar associations, such as the Atlantic Inland Association, have drawn up inland marine forms. Asso-

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ciations of underwriters primarily interested in the insurance of sailing craft such as the Provincial Schooner Association have promulgated forms especially adapted to these particular branches of underwriting, and forms especially designed for insurance of vessels on the Great Lakes are in common use.

Basis of All Policies the Same.—While all of these retain as their basis the old skeleton form of policy, particularly the clause enumerating the perils insured against, special clauses are incorporated dealing with conditions which are peculiar to hull insurance of the particular kind to which the form has reference. In designing new forms there is always the danger that the entire policy will be weakened by the introduction of clauses which are ambiguous enough to permit of court interpretations foreign to the intention of the underwriters, or which may undermine the whole basic fabric of the policy. However, it has been this same hesitancy to make any change that has resulted in the peculiar combination of words which clothes the common form of marine policy.

Rates of Premium.—On application by owners or insurance brokers, these underwriters' organizations also promulgate rates of premium for the insurance of vessels. The rates named are, however, merely the expression of an opinion by the organization as a collective body of underwriters and are in no way binding on the members. Because the organization rates a vessel, there is no obligation on the individual member of that organization to accept a portion of the risk. At times it is the opinion of some underwriters that a different rate is warranted but in general the rates and conditions and the forms promulgated are accepted by the members. There is, however, an obligation on the part of the members not to accept insurance at less than the promulgated rate.

The A.H.U.A. (1917 Form).—The form most commonly used at present in the New York market for the insurance of metal steamers is known as the A.H.U.A. (1917 form) the initials symbolizing the American Hull Underwriters' Association and the year named indicating the date of last revision (see appendix, p. 373). In general this form follows the basic principles of marine underwriting discussed in the previous chapters, but contains some special clauses which it is important to

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consider. It should be noticed that the simple statement found in the ordinary policy reading "upon the body, tackle, apparel and other furniture of the good ship, etc.," has been broadened to include the boilers and machinery of the steamer. The original clause giving the vessel liberty to "proceed and sail to, touch and stay at any ports or places, etc.," has been broadened to permit the vessel specially to do practically anything that a vessel could or would do either in the ordinary course of the voyage or while in port or under repair. It should be further noted in the separate valuation clause that refrigerating machinery and insulation pertaining thereto is not covered by the policy unless expressly included or unless it is the property of the owners of the vessel. It is quite frequently the case that the great packing companies who import frozen and refrigerated meats, under arrangement with the owners of vessels, will equip their steamers so that they will be fit to carry these highly perishable cargoes. Such equipment is not considered as part of the steamer itself, but must be specially insured.

P.P.I. and F.I.A. Interests.—A policy on hull covering partial losses, total losses, general average and salvage charges is known as a "full form" insurance. The desirability of "full form" underwriters restricting so far as possible the amount of insurance placed over and above the full form insurance has already been indicated. In the form under consideration an endeavor is made to compass this end in the following warranty, viz.:

"Warranted that the amount insured for account of the Assured and/or their managers on Disbursements, Commissions or similar interests P.P.I. or F.I.A. shall not exceed fifteen percent of the insured valuation of the Vessel, but the Assured may in addition thereto effect P.P.I. or F.I.A. insurance on any of the following interests:

Premiums (reducing or not reducing monthly) to any amount actually at risk, and

Freight and/or Chartered Freight and/or Anticipated Freight and/or Earnings and/or Hire or Profits on Time Charter and/or Charter for series of voyages for any amount not exceeding in the aggregate twenty-five percent of the insured valuation of the Vessel; and if the actual amount at risk on any or all of such interests shall exceed such twenty-five percent of the insured valuation of the Vessel, the Assured and/or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford under-

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writers any defense to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and/or their managers to insure in addition General Average and/or Salvage Disbursements whilst at risk."

The interests specified in this warranty are real interests but may not be susceptible of proof by documentary evidence, hence the insurance is made under P.P.I. and F.I.A. conditions. The underwriter in granting insurance on these conditions mutually agrees with the assured that the mere fact of the existence of the policy proves the interest and that between them so far as the policy is concerned, the full interest of the assured to the extent of the amount of the policy is admitted.

Purpose of the Disbursements Warranty.—This warranty has the effect of requiring the assured to place under full form insurance such a proportion of the total value of his vessel, that the excess amounts insured as disbursements, commissions or similar interests, freights, etc., shall not exceed a total of forty percent of the full form value. If there be actual freight interests at risk in excess of twenty-five percent, the warranty is not violated by the insurance of such excess as underwriters could not, of course, prevent the insurance of a valid freight interest at risk, no matter how large it might be. However, it is stipulated that such insurance must be reduced as the freight is earned until the total of such interests comes within the twenty-five percent limit. The explanation of the various freight interests enumerated will be left for the following chapter; it will suffice for the present to state that freight is the money which the owner receives either under charter or under bill of lading for the use of his vessel. A similar exception is made in the warranty in relation to premiums. This too being a valid insurable interest, underwriters could not, if they would, prevent its full insurance. This entire clause is aimed not at the insurance of valid interests arising out of the ownership of vessel property, but at the practice of endeavoring to obtain cheap insurance by placing an undue portion of the value of a vessel under P.P.I. conditions at the comparatively low rate prevailing for this form of insurance, thus lowering the full form value and in turn the premium developed thereon, while the underwriters' liability for partial losses remains to a great extent unchanged.

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Breach of Warranty with Respect to Innocent Parties.—It is further provided that a breach of this warranty as to P.P.I. insurance shall not affect the validity of the policy with respect to innocent third parties, such as mortgagees, who may have accepted the policy without notice of such breach, nor shall the warranty restrict the right of the assured to insure disbursements made on account of general average and for salvage while such disbursements are at risk. The disbursements referred to are amounts which the owners of the vessel may advance for the benefit of all concerned in the event of a casualty having occurred which involves general average or salvage expenses.

Average Clause.—The usual form of three percent average clause appears in this form of policy. One of the casualties enumerated in this clause is stranding, and in order that underwriters may be relieved of petty claims arising out of technical strandings, it is stipulated in a separate clause that grounding in the Panama Canal, the Suez Canal, the Manchester Ship Canal, or in certain other enumerated waterways, "shall not be deemed a stranding." The use of these channels at certain stages of the water may make grounding a natural occurrence and the underwriter by this stipulation seeks to avoid claims for these inevitable happenings. Furthermore, it is provided in the average clauses that in the event of stranding, the underwriters shall pay the expense of sighting the bottom, that is drydocking the vessel, if reasonably incurred, even if no damage be found. This provision places the underwriters in a strong position to insist on the examination of the vessel's bottom for possible injury, even if the owner prefers, owing to the delay involved, to defer such examination to a more convenient time. On the other hand, if the assured should drydock his vessel after a grounding in one of the excepted watercourses, the expense involved would not be at the charge of the underwriters as the casualty would not be a stranding within the meaning of the policy.

Sale or Transfer of Ownership.—Provision is made that in the event of the sale, or the transfer of the ownership of the vessel, the policy shall be null and void from the date of the sale or transfer unless the underwriters agree in writing to continue the insurance for the new owners. This is in order that the underwriter may relieve himself of the necessity of continuing the

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policy if the new ownership is not satisfactory to him. Exception is made if the vessel be at sea, either with cargo or in ballast, in which case cancellation is suspended until the vessel arrives at final port of discharge if with cargo or at port of destination if in ballast. This exception is made in order to relieve the new owners of the difficulty of replacing the insurance while the vessel is at sea.

Contributory Values.—Early in the World War when ship values began to increase by leaps and bounds underwriters, in certain cases of general average sacrifices and salvage expenditures, were held liable for these charges assessed against the vessel on her appraised value, in the proportion which the amount insured by them bore to the insured value. Thus, instead of being held liable for their percentage of the portion of the assessment applicable to the policy value, they were held liable for the same percentage of the entire assessment. Accordingly, to avoid this difficulty, the following amendment to the policy form was inserted, viz.:

"Where the assured has paid, or is liable for, any general average contribution and the contributory value is greater than the insured value, the amount recoverable under this policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a particular average for which these assurers are liable, the amount of particular average claim under this policy shall be deducted from the amount insured under the policy in order to ascertain what share of the contribution is recoverable from these assurers; the extent of the liability of these assurers for salvage shall be computed on the same principle."

This provision harmonizes with the British practice in similar cases as set forth in Section 73 of the Marine Insurance Act (see appendix, p. 406).

Effect of Breach of Cargo and Trade Warranties.—It is also provided in the form that breach of warranty as to cargo, trade, locality or date of sailing will not void the policy, provided notice of such breach or proposed breach be immediately given to the underwriters and such additional permium paid as may be required. The form also contains the usual war or "free of capture and seizure" clause relieving the underwriter from liability

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for war losses. A penalizing clause is also inserted in order to make the assured promptly notify the underwriters of surveys of the vessel to ascertain the extent of damage sustained and to make the assured take tenders for the repair of such damage rather than make private contracts for them. Other clauses are inserted in regard to cancellation for non-payment of premiums and other matters concerning adjustment of losses of which explanation is not necessary here.

Lake Time Clauses.—The insurance of steamers plying on the Great Lakes and waters tributary thereto is so different in many respects from the insurance of vessels operating on the oceans that a special form known as the "Lake Time Clauses" (see appendix, p. 382) has been promulgated by the underwriters. An organization composed of vessel owners and known as the Great Lakes Protective Association has done much to improve conditions of management and operation on the Lakes and as an earnest of their belief in its efficiency it carries twenty-five percent of the value of the vessels entered in the association in its insurance fund. Accidents because of faulty navigation have materially decreased under the influence of the association. It will be observed that the Great Lakes consist of large bodies of water connected by narrow channels, and owing to the congestion in these connecting channels accidents were of frequent occurrence until the Protective Association became powerful enough to control in a measure the navigation of these waters. Severe penalties for faulty navigation of member vessels have done much to remedy the former reckless striving of masters to make lower lake ports regardless of the danger they themselves incurred and the menace their faulty navigation was to other vessels. An organization of Canadian vessel owners is also performing a similar service with respect to vessels under Canadian registry.

Restrictions as to Navigation.—Perhaps the outstanding feature of the Lake form is the navigation restrictions which are definitely set forth. The Great Lakes are navigable for a portion of the year only, since conditions, prior to April 16th and after November 30th, ordinarily making navigation impossible or extra hazardous. These are the limits fixed for the operation of metal steamers, while wooden vessels are further restricted to sailings

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between May 1st and November 15th inclusive. The restrictive dates are sailing dates, vessels being permitted to proceed to destination even if some time elapses subsequent to November 15th or November 30th as the case may be. Geographically, navigation is limited to the Great Lakes and their tributaries not below Lake Erie but including the Niagara River. These are the basic warranties upon which the rate of premium is calculated. At the foot of the policy there is added a schedule of options which may be exercised providing for navigation prior or subsequent to the commencement or termination of the time warranties in the case of steel steamers. It often happens that an open season will permit early and late navigation and as the government aids to navigation are not removed until about the middle of December, such post season navigation does not incur any unduly hazardous risk. The additional premiums charged for these post-season sailings are considerable, while the ante-season sailings are charged at pro-rata of the season rate, such navigation being permitted or being possible only in the case of an early spring. It will be observed, however, that none of these extra sailings are covered unless special notice is given to the underwriters.

Extension of Navigation Limits.—Also in consideration of additional premium liberty is granted vessels to proceed to ports below Lake Erie, though such navigation is, of course, restricted by physical conditions. The Welland Canal and the canals on the St. Lawrence River are large enough to accommodate only the smaller boats operating on the Great Lakes. In fact the whole of lake navigation is controlled by the capacity and depth of the channels whether river or canal, connecting the various lakes. Much money has been spent by the American and Canadian Governments in the improvement of these waterways, but the increase in size of lake vessels has kept pace with the increased depth in the channels.

Winter Mooring Clause.—Notwithstanding the fact of these time and trading warranties, lake hull policies are ordinarily written for a period of one year, the vessels being laid up and out of commission during the closed season. A clause called the "Winter Moorings Clause" is accordingly incorporated in the policy providing that winter mooring must be in places and under conditions satisfactory to the underwriters. A regular inspection

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service of winter moorings is maintained by the underwriters with the result that conditions in this respect have greatly improved in recent years. It is interesting to note in this connection that owing to the congestion in the handling of grain cargoes on the lakes it is customary for vessels at the lower lake ports to retain their grain cargoes on the last trip down, discharging the grain from time to time during the winter as the congestion at the grain elevators is relieved. In like manner grain is loaded on vessels moored at upper lake ports during the winter and stored pending the opening of navigation, when the vessel fully loaded proceeds to her destination. This system of winter storage of grain aids greatly in the movement of the grain crop.

Deductible Average Clause.—Instead of having the average clause customary in the insurance of ocean vessels, a deductible average clause with a deductible franchise of $500 is found in the Lake form. Adjustments are made on the basis of a three percent average clause but from the claim as adjusted on each accident there is deducted this $500. In the event of total or constructive total loss no such deduction is made. It is further provided that on vessels sailing during April or December the underwriters shall be liable only for the excess of three percent each accident on the insured value with respect to all claims arising from damage by ice, except total or constructive total loss so caused. The Collision clause also contains the $500 deductible franchise.

Lay-up Clause. Change of Interest.—As lake vessels are permitted to navigate only during the open season, the vessels must be laid up in port at all other times. The provision for lay-up returns therefore applies only to lay-ups occurring during the season of navigation, while the portion of the annual rate applying to the closed season represents merely a port risk charge. It is also provided that change of interest in the vessel insured will not affect the validity of the policy. In this the policy differs materially from other forms where it is usual to require the assent of the underwriter to a change of interest. It is also customary to incorporate in Lake Policies a Protection and Indemnity Clause which is very broad in the protection afforded, even extending to claims for loss of life and personal injury, unless such claims are made under Workman's compensation or other similar acts.

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Wooden Sailing Vessels.—Policies written to cover the hulls of wooden sailing vessels display few peculiarities, these policies ordinarily being written on forms that adhere very closely to the original basic form of policy. The average franchise is usually five percent, with provision made in some policies for a minimum claim for partial loss of $500. The "thirds off" clause is usually incorporated with various modifications respecting anchors, chains, yellow metal or sheathing and other metal parts of the vessel. The collision clause is usually in the three-quarter form, the owner bearing one-quarter of this liability. The underwriting of wooden sailing vessels is engaged in by only a limited portion of the insurance market. The amounts to be placed are relatively small, and the risks involved are naturally more hazardous that in the case of mechanically propelled metal vessels. In fact the wooden sailing vessel business was in a decadent condition at the outbreak of the World War. The powered vessel had driven the few remaining wooden ships into the carrying of rough cargoes such as coal and lumber in the coastwise trade. The demand for tonnage, however, caused a revival of the wooden sailing vessel and within recent years many ships of this type have been built. Unfortunately, tempted by high freight rates the owners of many of these vessels entered them in trade across the North Atlantic, a service for which they were poorly adapted, with the result that many fell a prey to marine perils while numerous others because of their lack of speed and of control became victims of submarines.

Wooden Steamers.—The new types of wooden steamers developed as a war emergency measure have presented a very serious problem to marine underwriters. The idea of the wooden steamer, of course, is not new, since the first steamers built were of this material, but the building of large high-powered wooden steamers of green or unseasoned wood by inexperienced shipbuilders is a distinctly new departure. The forebodings of underwriters in regard to these vessels have been amply justified by the recent limited but significant experience. Poor workmanship by inexperienced ship carpenters, insufficient fastenings and green wood have produced steamers not fitted for ocean service, with the inevitable result that in many cases, a short time after sailing they have returned to port leaking or otherwise

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in distress. Underwriters have accordingly hesitated to assume the insurance of these vessels. Such insurance as has been granted has been written on "free of particular average American conditions" terms, to which has been added a deductible average clause. The trading warranties are also very restricted practically, confining the vessels to the United States Coastwise Trade. Under this form of policy the owner assumes a considerable portion of the risks involved. Whether or not the underwriting of these risks under this very limited form of policy will be profitable, time alone will prove.

The Internal Combustion Engine.—Within the last ten years considerable energy has been devoted to the construction of a practical marine internal combustion engine. The demand for tonnage has given new impetus to the construction and improvement of this type of motive power. Large internal combustion engines have been installed as the sole motive power of large-sized tramp vessels, and such ships have been operated with considerable success. This type of carrier is known as the motor vessel. However, a hybrid vessel, taking a place midway between the wooden schooner and the motor vessel has made its appearance in large numbers and has brought to underwriters a number of new and perplexing problems. The vessels are known as auxiliaries, depending for their motive power partly on their sails and partly on the internal combustion engines with which they are equipped.

The Auxiliary Sailing Vessel.—Theoretically the idea underlying this type of vessel is excellent. In fair weather and favorable winds the sail power can be used, the oil fuel being conserved unless indeed increased speed is desired when both forms of motive power can be used conjointly. In foul weather when an ordinary sailing vessel might be driven far from her course, entailing much delay in the prosecution of the voyage the auxiliary vessel with her mechanical power can at least be kept on her course, even if little forward progress is being made. Most of these vessels have been constructed of wood, many of them on the Pacific Coast where excellent ship lumber may be obtained at reasonable cost. Faulty design in the early forms of this type produced vessels which were neither sufficiently equipped with sail or mechanical power rendering them subject to the mercy

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of the waves and wind in heavy weather. Other vessels were too lightly built to withstand the extra weight of the motor engines and the vibration caused by their operation. It has also been difficult to fasten these comparatively heavy engines to their wooden beds, so that they will not loosen under operation.

Defects in Motive Power.—While most of the faults of this nature have been remedied, the fact remains that because of the engines themselves the hazard in connection with the insurance of these vessels is very great, and the experience of underwriters in insuring them has been exceedingly bad. It is difficult to determine whether the fault is with a new type of engine which has not yet been perfected to the point where it is entirely dependable as a marine engine, or whether the fault is with the inexperience of the engineers, who, trained in the use of the steam engine, are unfamiliar with the peculiarities of an explosive motor. Perhaps a combination of both reasons would give the true cause of the many accidents which have happened to the motive power of these vessels resulting in heavy claims on the underwriters.

A.H.U.A. Auxiliary Sailing Vessel Form. — To overcome the weaknesses which have appeared in the underwriting of these vessels and to place the business on a safer foundation the American Hull Underwriters' Association has recently promulgated a form for the insurance of Auxiliary Sailing Vessels either of wood or steel construction and for Wooden Motor Ships. This form (see appendix, p. 377) is a combination of the A.H.U.A. steamer form and the Boston Schooner form and follows in general the wording of these two forms with some restrictions as to loading and trading. The "thirds off" clause with modifications is inserted and the collision clause is in the three quarter liability form. The chief point of difference as may be expected in view of the foregoing remarks, is in connection with the average clause as it applies to the machinery of the vessel. The clause inserted with respect to machinery claims is the result of evolution. The original clauses applying to such claims provided that, in the event of particular average on the machinery, the underwriters would not be liable except for the excess of ten percent upon the insured value of the machinery in respect of each accident. Experience soon showed that machinery claims arising out of minor accidents quickly exceeded the ten percent

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deductible franchise, and on account of the incorporation of the "Inchmaree" clause the underwriters were held liable for the many losses resulting from the inexperience of the engineers. Accordingly, a new clause was adopted which made the underwriters liable for only machinery losses caused by stranding, sinking, burning or collision with another vessel. This clause effected an improvement in the experience of underwriters, but since losses continued in large amounts the new form contains a still more drastic clause reading "Free from particular average on machinery and everything connected therewith unless caused by stranding, sinking, burning or collision *and from all such claims there shall be deducted ten percent of the valuation herein of machinery.*"

The Future of Auxiliary Vessels.—Whether or not this new form will put the underwriting of these vessels on a paying basis remains to be seen. It is, however, quite probable that until a body of engineers is trained in the operation and care of these engines heavy losses will occur. The placing of a considerable share of the burden of such damage on the owners will however do much in speeding up the training of men in the intricacies of these very delicate machines. This type of vessel can serve a very useful purpose in the World's commerce and while underwriters as usual are interested in the development of new vessel types, they can hardly be expected to shoulder the burden of paying for the experience necessary to perfect them. Underwriters in the past have done much to bring vessels to the high standards which now prevail, because of their unwillingness to assume risks on those which were not properly constructed and equipped for the employment to which they were assigned. So in this case, severe policy conditions will give added impetus to the perfecting of the motor and of the skill of men operating the engines.

Builder's Risks.—Marine underwriters in recent years have undertaken a new branch of insurance, that of builders' risks. This form of insurance while based on the old form of policy is so very different in the protection given that a special form of policy has been designed in order to furnish the kind of insurance desired by builders. It will be observed that up to the point where a new vessel is actually launched, there is really no marine

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hazard. The protection afforded prior to that time is purely a shore cover, except in so far as materials designed for the vessel may be afloat on barges or other craft at the builders' yards or in transit to the shipyard. In the builders' risk form of policy in present use, designed to overcome abuses which entered into the writing of this class of insurance, the underwriter attaches his risk from the date of the laying of the keel of the vessel. Premium is charged from that date on the total amount for which he would be liable, should the vessel become a total loss after completion, but before delivery. (See Appendix p. 380.)

Special Hazards Insured Against.—In addition to the perils set forth in the ordinary form of marine insurance policy the underwriters on a builders' risk policy also assume liability for the risks set forth in the following clause:

"This insurance is also to cover all risks, including fire, while under construction and/or fitting out, including materials in buildings, workshops, yards and docks of the assured, or on quays, pontoons, craft, etc., and all risks while in transit to and from the works and/or the vessel wherever she may be lying, also all risks of loss or damage through collapse of supports or ways from any cause whatever, and all risks of launching and breakage of the ways."

The foregoing clause outlines the protection afforded up to the point of the vessel taking the water. The underwriter further obligates himself, in the case of failure to launch, to bear all subsequent expenses incurred in completing the launching. It occasionally happens that through some miscalculation in the construction of the ways or through some mishap to them, caused frequently by their sinking due to an insecure foundation, that a vessel will fail to slide into the water causing serious damage not only to ship itself but to the ways. There is great danger that in failure to launch, the whole structure of the ship will be strained. The expense of completing the launch and repairing the ways and the ship is at the risk of the builders' risk underwriters.

Risks after Launching.—The vessel having been successfully launched, the underwriter continues on the risk and assumes liability for all damage during the trial trips and all hazards while proceeding to and returning from the trial course. The

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policy contains the full four-fourths collision clause, and with respect to average, agrees to pay all losses irrespective of percentage without the deduction of thirds whether the average be particular or general. In the case of government vessels, liberty is granted for the testing of the guns and torpedoes of the warship, but in the event of loss or damage to the ship or machinery resulting from such test, the underwriter assumes no liability therefor, unless the casualty results in the total loss of the vessel. In the case of submarines, part of the testing consists in the submersion and emersion of the vessel and the underwriter is liable for any mishap which may occur during this test. Submarines have at times successfully submerged but have failed to emerge causing considerable expense in raising the vessel.

Underwriter Guarantees Integrity of Material.—The builders' risk form is so broad in the protection afforded that the underwriter in reality guarantees the integrity of the materials entering into the construction of the vessel. If on the trial trip defects become manifest which necessitate overhauling and additional expenses, claim for such loss is responded for by the underwriter. For instance, on the trial trip on account of the working of the engines a flaw may develop in the bed-plate of the engine necessitating the stripping of the engine and the placing of a new bed-plate. The actual cost of a new bed-plate may in itself be small, but the necessary expense involved in the installation of the new plate, in some cases results in very heavy claims.

Special Clauses and Warranties.—In the builders' risk form of policy the underwriter also agrees to cover all damage to hull, machinery, apparel or furniture caused by the settling of the stocks on which the vessel is being built or failure or breakage of shores, blocking or staging, or of hoisting or other gear, either before or after launching and while fitting out. The policy also contains the "Inchmaree" clause and the Protection and Indemnity clause, not, however, assuming liability for loss of life or personal injury. The collision clause is extended to cover risks ordinarily excluded by this clause, that is, responsibility for any sum which the assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, or for injury to harbors, wharves, piers, stages, and similar structures. Owing to the very broad protection afforded by the builder's risk form,

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underwriters find it prudent to insert warranties excluding certain perils. One of these relieves the underwriters from claims arising directly or indirectly under workmen's compensation or employer's liability acts and any other statutory or common law liability with respect to accidents to any person or persons whatsoever. The free of capture and seizure clause and the strikers and locked-out workmen clause are also inserted. In order to offset the danger that might ensue to vessels being built at yards on the Pacific Coast through earthquake shocks, a warranty is inserted freeing the underwriter from loss or damage caused by earthquakes. While the underwriter is liable for the repair of damages resulting during launching and trial trips, yet by warranty he declines to assume liability for any consequential damage or claims for loss through delay, however caused. Formerly, under builders' risks policies it was customary to insure property while being conveyed from the place of manufacture to the vessel, as in the case of submarine engines built on the East Coast for installation in submarines being built on the West Coast, but by warranty this risk is now excluded from the policy. It must be borne in mind, however, that several of these warranties may be waived by the payment of an additional premium.

Return Premiums.—With respect to the question of return premium in builders' risks policies, in the event of a vessel being completed prior to the expiration of the policy term, provision is made for the payment of pro rata return premium for the months not commenced upon. The underwriter, however, stipulates that in any event, such return premium shall not exceed a fixed portion of the total premium. This is necessary in view of the great rapidity with which ships are being produced at the present time. Were an underwriter to receive only one-twelfth of the annual rate for a steel steamer completed in less than one month, the business would not, at the low rates prevailing, develop a sufficient fund of premium with which to pay possible losses. It will be observed that in the event of loss or claim under this form of policy, the underwriter assumes liability for only his proportion of the loss, based on the relation which the amount insured by his policy bears to the completed contract price of the vessel.

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Fertile Field for Insurance.—In view of the rapid strides which ship-building is making in this country, the builder's risk field would seem to offer underwriters a fertile field for development. At present most of the ship-building is on government account and is therefore not insured with private underwriters. However, with a return of peaceful conditions this insurance will doubtless return to the open market. In fact, measures are now in progress looking toward the insurance of government vessels on a special form of policy similar to the standard form, except with respect to the determination of the premium charge and some minor matters in regard to the scope of protection afforded. The determination of proper rates of premium for this kind of risk is a matter of considerable difficulty, and only by the closest inspection of the plants can satisfactory results be obtained. The fire hazard in non-fireproof yards is an exceedingly important element in the risk, while the general upkeep of the yard and its suitability as a site for ship launching are factors of no little importance.

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CHAPTER 15

FREIGHT INSURANCE

Freight Insurance a Difficult Subject.—Freight the third great maritime interest, is of all the subjects of marine insurance the most difficult to comprehend. Why this should be so, is somewhat hard to understand, nevertheless the fact remains that in the whole realm of marine insurance more difficult and complicated questions arise in regard to freight than with respect to any other single interest. Perhaps a certain part of this difficulty arises through a confusion of terms; the word, freight, in this country at least, having a double meaning. Freight as usually thought of by the lay mind refers to goods, to the cargo of a vessel or to the contents of a railroad car, and accordingly the expression "freight" steamer, or "freight" car is used, a meaning of the word that is quite foreign to the usage in Great Britain, where a freight car is referred to as a goods truck. Unfortunately for the clear understanding of the subject of freight as used in shipping transactions and especially in marine insurance, there is this common and yet non-technical meaning of the word.

Meaning of Freight in Marine Insurance.—Freight as used in marine insurance has an entirely different meaning, having reference to the money which is paid to a vessel for the carriage of goods or to any common carrier for the transportation of property by rail or water. We thus encounter the expression "freight" rate meaning the charge made by a carrier for the transportation of goods and merchandise including animals. It must be observed, however, that the expression freight is not used in connection with the money received for the transportation of passengers, this being referred to as passage money in the case of water carriage over considerable distances and as "fare" in the case of short water trips or in railroad transportation. Freight then, as used in connection with transportation insurance, may be considered as an intangible interest, as a financial benefit derived

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through the employment of vessels or transportation lines in the carriage of property. The fact that the interest is an intangible one, arising merely because of the existence of a paper contract which establishes a certain relation between the owner or the charterer of a vessel and the owner of property offered for transportation by that vessel, no doubt adds somewhat to the difficulty of understanding the subject. The forms of contract differ so widely, the time of payment of the freight money varies so much and the duties and obligations of the two parties to the contract are so involved, in many agreements, as to cause situations to arise which are complicated and difficult of explanation. The insurable interest in freight, depending on the terms of the contract of carriage and the terms of the contract of the sale of the goods themselves, causes this subject to be wrapped up in all the complications and mystery which surround an intangible interest.

Vessels Built to Earn Freight.—Vessels are built for the purpose of earning freight and their value lies solely in their ability to accomplish this end. This statement refers to merchant vessels built, owned, and operated by private enterprise and does not of course refer to the vast amount of tonnage recently constructed and now being built with an immediate purpose which looked solely to the successful prosecution of the war. These vessels, however, if they are sold to private owners will be purchased at a price which the buyer will feel represents the earning value of the vessel as a cargo carrier for hire. The value of a vessel is roughly the sum total of the freight, which can be earned during its normal life, say twenty years, less the cost of earning that freight and the cost of unkeep, plus the break-up value of the vessel as scrap at the end of its earning period. This fact caused it to be argued that there is no insurable interest in freight and that the insurance on the hull carries with it the insurance of the immediate and prospective earnings of the vessel.

When is Freight Earned?—Under the original form of freight contract, the vessel is entitled to no compensation under a freight agreement, unless and until it has fully and precisely fulfilled the contract of carriage, notwithstanding the fact that the nonfulfillment of the contract has resulted through causes beyond the control of the owner or charterer of the ship or his agent, the

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captain of the vessel. Thus under the common law of England were a vessel owner to contract to carry a parcel of goods from Liverpool to Shanghai for a named sum of money, and through causes beyond the control of the owner or captain, the vessel were compelled to enter the port of Hong Kong and there end the voyage and there discharge and make delivery of the goods, the owner of the goods would be relieved from paying the freight stipulated in the contract or any part thereof, because the owner of the vessel, the other party to the contract, has not fulfilled the terms of the agreement. It will be observed that in such a case the owner of the vessel has incurred almost all the expense necessary to completely fulfill his agreement and these expenses of fuel, food, wages, etc. must be paid notwithstanding the fact that under the circumstances he will receive nothing in return and will in addition lose his profit, that is the net freight. This net freight is the only freight that can be considered in making up the value of the vessel itself, and were the theory that there is no insurable interest in freight put into actual practice the owner would have no means of protecting himself against the loss of expenses incurred in the event of the freight not being earned. Of course, in the case just cited if the vessel could not proceed beyond Hong Kong the captain would endeavor to arrange for the forwarding of the cargo by other conveyances to Shanghai and thus earn the freight. The expenses incurred in so forwarding the cargo would result in a loss to the vessel owner or charterer recoverable under a policy on freight provided the cause of the vessel's entering Hong Kong in distress was a peril insured against.

Freight "Pro-rata Itineris Peracti."—The rule in most European countries other than Great Britain is less stringent than that outlined above. Freight *pro-rata itineris peracti*, that is an allowance of freight for the part of the contract performed, is granted to the vessel owner or charterer, if the complete fulfillment of the contract is prevented by causes over which he has no control. In the United States the English practice has been closely followed. Nothing short of exact compliance with the terms of the freight agreement is considered a fulfillment of the contract entitling the vessel owner to compensation. It does not follow, however, that an express agreement may not be made by the cargo owner to receive his cargo at a point short of

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destination upon payment to the vessel owner of an agreed amount of freight for the part of the voyage already completed. This is often done in order to obtain prompt possession of the property since the vessel owner has the right to retain possession of the goods for a reasonable length of time, if he considers that he will be able to forward them to destination and thus earn his freight. This right of the vessel owner to retain possession of the goods is a logical one, as otherwise the cargo owner in the event of delay through marine peril or otherwise, could step in and demand possession of the property, thus preventing the vessel owner from earning his freight. If the cargo owner is unwilling to await the arrival of the vessel at destination, or the forwarding by the vessel owner of the goods on some other conveyance, he may by payment of full freight or by payment of pro-rata freight, if the amount of this can be determined amicably, usually obtain immediate possession of the property.

Prepaid and Guaranteed Freight.—Again it must not be presumed, from this statement of the basic rule in regard to the earning of freight, that it is not possible for the vessel owner to make a freight contract by which he secures payment of the freight whether or not the voyage is fully performed. On the contrary, many freight contracts provide for prepaid freight or guaranteed freight, that is payment of the freight even if the goods are not delivered according to the terms of the contract, such non-delivery resulting from causes beyond the control of the vessel owner. If the freight is merely prepaid without any stipulation in the contract that the prepayment is to be retained whether the voyage is successfully completed or not, the prepaid freight must be returned if the voyage is not completed in accordance with the terms of the agreement of carriage. If the freight is prepaid absolutely or is guaranteed, which amounts to the same thing, it will be observed that the vessel owner has no freight at risk during the voyage as he either has the freight in hand or has a contract under which the freight will be forthcoming whether or not the voyage is completed. The money paid or to be paid in such cases for the carriage of goods has thus lost its identity as freight and while it may be insured by the cargo owner under the name of freight, it has in reality become

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part of the value of the goods and may rightly, if the cargo owner so elects, be included as part of such value, and insured as goods.

Prepaid Freight Wrong in Principle.—Contracts calling for the prepayment or the guaranteeing of freight are wrong in principle, and become possible when a situation exists in the tonnage market where the demand greatly exceeds the supply. In such event the steamship owner or agent in a measure has the cargo owner at his mercy and can demand terms of payment, which would not be tolerated in a competitive market. The owner of a vessel is by the common law obligated to deliver cargo which he receives under a contract of carriage at the destination named in the condition received, the acts of God and of the Kings' Enemies alone excepted. While this basic law has been greatly modified by statute, in that vessel owners have been relieved of many of the obligations formerly imposed upon them, the law has not, in the absence of express agreement, relieved owners from the primary duty of performing the contract of carriage to the letter. While the prepayment of freight in no wise relieves owners from the duty of implicitly performing the contract, the fact that the freight money is in hand or guaranteed removes the chief incentive to the diligent prosecution of the voyage, and makes the owner less likely in the event of disaster to use all possible efforts to carry the cargo forward to destination. Plausible excuse will be offered as to the impracticability of taking measures to forward cargo to destination, which measures, if the payment of the freight were dependent thereon, would seem the obvious course to pursue.

Interesting Underwriting Problems.—The insurance of freight presents some very interesting underwriting problems owing to the fact that certain hazards in connection with the interest may be at the risk of one party to the contract of carriage while others are at the risk of the other party. Reference has already been made in an earlier chapter to charter parties and bills of lading. The relations established by these two forms of agreement as a rule determine the conditions with which freight insurance has to deal, and as the forms of these agreements are many, so the conditions involved in freight insurance are many. Were it possible in each case of freight insurance to scrutinize the terms

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of the freight agreement, much of the difficulty experienced in the insuring of freight would be eliminated.

Charter Parties.—Under the charter party, the owner of a vessel hires it to a ship operator or to a merchant for a definite period of time or for a specific voyage, payment for the use of such vessel being stipulated in the agreement. The owner may turn the vessel over to the charterer, the latter agreeing to operate it, to insure it and at the end of the specified voyage or time to return it to the owner in the same condition in which he received it. A fixed price per day may be agreed upon for the use of the vessel, payment to be made monthly. It is usually stipulated that if the vessel be lost or disabled so as to be unfit for service, the per diem payment is to cease from the time the vessel is lost or during the period it is disabled. Under this state of facts the vessel owner is not at all concerned in the success of the charterer in being able to obtain freight engagements for the vessel, except in so far as such inability may result in the financial embarrassment of the charterer, but he is greatly concerned in the continued existence of the vessel in a navigable condition. This is not because loss or damage to the hull will affect him, this contingency by the terms of the agreement being at the risk of the charterer, but because the disabling of the vessel will cause the payment of the charter money to cease. The owner of the vessel, therefore, has an insurable interest in the charter money called for by the terms of the contract against loss through the occurrence of the perils which will cause these payments to cease.

Charter Money.—The forms of charter parties are various calling for the chartering of the vessel on any one of a number of methods of operation and stipulating for the payment of the charter money in various ways. This is the name by which freight is known when the payment is made for the use of an entire vessel or a part thereof under a charter party form of agreement. Charter money may be paid by the day, month or year, by the trip or round voyage, or it may be based on a unit of measure as so many dollars per ton or per bale. In any event if the owner hires his vessel under charter party, this agreement fixes the respective liabilities of the two parties with regard to the vessel itself and its earnings, the freight or charter money. In many cases the owner will charter his vessel to a merchant who has a

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quantity of goods to ship sufficient to furnish a full cargo for the ship. In such case the sole duty of the cargo owner is to furnish the cargo, the vessel owner attending to the stowage and carriage of the goods and in the absence of special agreement to the contrary, receiving his compensation at the stipulated rate on the right delivery of the cargo at the destination named.

Bill of Lading Freight.—Where a vessel is put on the berth to load general cargo for any merchant who may offer cargo for the intended port of destination, the second form of freight agreement, the bill of lading, comes into use. The bill of lading is the vessel's receipt for goods delivered to it to be transported to the destination named therein, in accordance with the terms and conditions thereof, at the rate of freight stipulated. The sum total of all the bill of lading freight is the total gross earnings of the vessel for the contemplated trip and is at the risk of and therefore insurable by the owner, or charterer, as the case may be, because under the ordinary form of bill of lading the freight is not due from the cargo owners until the goods are delivered at destination. The owner or charterer of the vessel however has a lien on the goods and may retain possession thereof until such payment is made. Insurance placed on bill of lading freight is usually valued at freight list.

Delivery of Cargo in Specie.—At this point it will be proper to explain that under common law as amended by statute and under the ordinary form of bill of lading, while it is required that the owner or charterer deliver cargo at destination in order to earn freight, it is only required that such delivery be made *in specie*. That is, the owner or charterer is deemed to have fulfilled his agreement, if he delivers the same goods that he received, regardless of the fact that they may have been severely damaged through causes beyond his control. If, however, the goods are not delivered in the form in which they were received the owner or charterer is in exactly the same position with respect to payment as if delivery had not been made. Thus if cement is shipped, but through the entrance of water into the hold it arrives as stone, delivery cannot be made in specie and the cargo owner will not be required to pay the freight. It is true, however, that when goods are received in a damaged state caused by conditions for which the owner or charterer is not liable, the consignee

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may be compelled to pay full freight. The vessel has in all cases a lien on the cargo for the amount of freight thereon. This calls attention to the fact that there are certain hazards in connection with freight that are at the risk of the cargo owner.

Collectible Freight or Freight Contingency.—This risk on freight for which the cargo owner is liable is insured under the name of collectible freight or freight contingency. The risk assumed by the underwriter is comparatively small. If the goods are damaged during the course of the voyage, it does not necessarily follow that there will be a claim under the contingency freight insurance as the vessel may never arrive or on arrival the damaged goods may have changed in specie, thus relieving the cargo owner from any freight payment. If the goods are landed in specie, however, the freight is due. The cost of the goods is increased by the amount of freight so paid. It is on this basis that claim under such freight insurance is made. That is, to the insured value of the goods is added the insured value of the freight contingency, and the percentage of loss suffered by the goods as determined by a comparison of the sound and damaged values of the property is applied to this combined insured value and settlement made accordingly. Freight contingency or collectible freight is usually insured in the same policy as the goods themselves, the rate charged on the freight being, however, but a fraction, usually one-third of the rate on the goods in view of the few hazards to which this interest is exposed. The use of the words "collectible freight" in relation to the cargo owner should not be confused with the same expression when used to describe the interest of the vessel owner or charterer in bill of lading freight payable at destination. Owing to the double use of this expression it is preferable to refer to this bill of lading freight as "freight contingency" when considered from the point of view of the cargo owner.

Various Freight Interests in a Single Venture.—It will thus be seen that many freight interests may be involved in a single venture. In the case of a boat chartered on time and put on the berth by the charterer, the owner will have an insurable interest in the charter money if its payment is contingent on the continued existence of the vessel; the charterer will have an insurable

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interest in the bill of lading freight for the immediate voyage, if collect, while the cargo owner will have an insurable interest in the freight contingency. If the charterer has rechartered to another party who in turn puts the vessel on the berth, the original charterer may have an insurable interest in profits on charter, that is the difference between the amount he will have to pay the owner and the amount to be paid to him by the party to whom he has rechartered the vessel. These cases merely present some of the more common and apparent freight interests.

Freight a Contingent Interest. Dead Freight.—In principle the insurance of freight differs not at all from the insurance of hull or cargo. The interest is intangible being based merely on a contractual relation, but the perils to which the interest is exposed are precisely the same perils to which hull and cargo are exposed. The earning of the freight in most cases is dependent on the continued existence of the cargo and the successful prosecution of the voyage by the vessel. In this connection mention may be made of what is known as "dead freight." It may happen that after a merchant has engaged space in a vessel the goods which he intended to ship are destroyed or he is for some other reason prevented from making the intended shipment. He may be able to substitute other goods, but if he cannot do this and the shipowner cannot obtain other cargo to fill the space in question, the merchant may have to pay for the space for which he contracted although the vessel sails with the space unused. The freight paid for unused space is called "dead freight." It may be that the shipowner can obtain cargo for the whole or part of the space engaged, but at a lower rate than the merchant was to pay, in which event the difference between the contract price and the freight received for the substituted cargo will have to be paid by the merchant. It is the shipowner's duty, of course, to use reasonable diligence to fill dead cargo space and thus reduce the amount to be paid by the merchant. Dead freight is not an insurable interest, as the loss of the merchant is determined prior to the inception of the voyage, while the right of the shipowner to the dead freight is in no way contingent on the successful performance of the voyage.

When Does Insurable Interest Commence?—The risks to which the interest of freight are exposed being the ordinary

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marine perils covered by a marine insurance policy, the principal difficulty is to precisely define the insurable interest and the particular contingencies which are at the risk of the person desiring the insurance as shown by the contract of affreightment. To have an insurable interest in freight there must be a definite contract of employment for immediate or future execution. In the ordinary case of shipowners' freight, the payment of which is contingent on the successful execution of the freight agreement, the insurable interest commences when the ship is ready to receive the cargo or sails in ballast for the loading port. Thus if a vessel under contract to carry a cargo of cement from Newport News to a River Plate Port for which it is to receive say $20,000, on the right delivery of the cargo at destination, sails from New York to Newport News in ballast, the owner has an insurable interest to the extent of $20,000 in the freight to be earned on the trip from Newport News to River Plate. If disaster overtakes the vessel between New York and Newport News, and the vessel is lost or so injured that the contemplated trip must be abandoned there will be a total loss of the freight. If the cement is loaded and the vessel proceeds on her journey, but through perils insured against part of the cargo is so damaged that delivery of this part cannot be made, then there will be a total loss of part of the freight, representing that portion of the freight applicable to the damaged cargo. If on the other hand, owing to stress of weather, a sacrifice of part of the cargo is necessary for the safety of the entire venture and a portion of the cement is jettisoned, thereby entailing the loss of the freight on this portion of the cargo, a general average loss on freight will have occurred, and all the interests saved will contribute to the freight lost, while the freight earned on the saved cargo will bear its share of the contribution.

Future Freights.—Future freights may be insured, provided there is a definite contract of affreightment. For instance, in the case cited in the preceding paragraph, the vessel owner might have a definite contract to carry a full cargo of wool from the River Plate to Boston, a lump sum freight of $30,000 to be paid on right delivery of the wool at Boston. The owner can insure this freight on the trip from New York via Newport News to River Plate, because his interest in this return freight is not a

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speculative interest, but a definite one arising out of a valid contract, the execution of which is merely dependent on the continued existence of the vessel. The mere knowledge or expectation on the part of the vessel owner that he would obtain a wool charter on arrival at the River Plate would not give him an insurable interest in the freight which he might earn if such a contract were made. If, however, while the vessel was on the way from Newport News to the River Plate such a contract should be consummated for the return trip, then the insurable interest in the freight to be earned on the return trip would arise immediately. It is important when insuring the freight to be earned on future trips that the interest which is being insured be definitely described.

Anticipated Freight.—In the case cited above where the vessel sailed from Newport News without definite freight engagement after arrival at the River Plate, but with a reasonable expectation of obtaining a charter, the owner is not absolutely precluded from insuring his expectation. This is commonly done under the name of anticipated freight, the insurance obtained in the ordinary case being against total and constructive total loss only. Obviously, there being no definite insurable interest which can be proved by the production of a contract of affreightment, such insurance is effected policy proof of interest, full interest admitted, the policy being an honor document, payable by the underwriter on the production of proof of the loss of the vessel. It is evident that such insurance is open to gross abuses and may, in fact, be used as a cloak for a mere gamble. For this reason, as already indicated in the discussion of hull insurance, many hull policies contain a warranty that the amount placed on P.P.I.F.I.A. form shall be limited to a fixed percentage of the insured value of the vessel.

On Board or Not on Board.—The expression freight "on board or not on board" is frequently found in freight policies. The intent of this clause is not always clear as it is evident that freight being an intangible interest cannot be on board the vessel. The goods for the carriage of which the freight is to be paid may or may not be on board in the case of chartered freight as was indicated in the above-described case of the vessel sailing in ballast from New York to Newport News to load cement. It

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will be recalled that the skeleton form of policy reads "beginning the adventure upon the said goods and merchandises from and immediately following the loading thereof on board the said vessel, etc.," and while this expression could not be held to refer to freight it may be that the expression "on board or not on board" is inserted to avoid the possible implication that the goods to which the freight relates must be on board before the risk will attach. This expression is also used in connection with insurances on freight for a long round voyage, during which cargo will be loaded and discharged at way ports. The exact amount of freight at risk in such cases cannot be definitely determined, but if the vessel owner wishes a valued policy covering this freight, rather than insurance on P.P.I. conditions he will place the risk "on board or not on board."

Chartered or as If Chartered.—Coupled with this expression the words "chartered or as if chartered" will be found or these latter words may be used alone. The meaning of this expression is exceedingly doubtful, several decisions having been rendered on these words without shedding much light on their meaning. It would seem that the expression is meaningless where the freight is actually under charter, but in cases where there is no definite charter as where the owner employs his vessel for the carriage of his own property, the expression could take on the meaning that the freight while not actually chartered freight was to be insured under as favorable conditions as would chartered freight. In the event of the freight to be earned on a future voyage being insured during the present trip, where the contract for the future voyage is under agreement but has not been reduced to a formal charter, the combined expression "freight on board or not on board, chartered or as if chartered" would seem to specifically provide for both contingencies, *i.e.*, the fact that the goods to which the insured freight relates are not yet on board and that the formal charter has not yet been signed. The money, which the owner of a vessel saves by carrying his own goods can be insured as freight in the same manner as freight to be earned for the carriage of the property of others.

Termination of Risk.—A policy of insurance on freight continues to cover until the contract of affreightment is completed, broken up or abandoned. It is not necessary, however, that the

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protection afforded be concurrent with the freight contract, but may cover only a portion of the intended voyage, if such intention is clearly indicated in the policy. Freight may also be insured on time. That is, a policy may be written to cover the freight at risk on a vessel or a fleet of vessels for a definite period of time, say one year. The amount at risk at any one time is limited to a specific sum and the freight is valued on some definite basis such as freight list or amount of charter. Under such a policy in the event of loss the amount recoverable will be the proportion of the loss which the amount insured bears to the total amount of the freight list or of the charter. Under such a policy declarations of insurance are made as under a floating cargo contract, premium being charged on the amounts as reported.

Amount Insured.—The amount insured on freight should be limited to the gross amount at risk plus the cost of the insurance. No account is taken of the cost of earning the freight to be paid. It may happen that under a long time charter the cost of operation may vary greatly, so that if freight payments are made monthly one month may show a considerable profit, whereas a later month may result in an equal amount of loss. Nevertheless, the amount at risk should be constant, or if insured for the whole amount of the charter, should be reduced proportionately month by month as the freight is earned. Again, a ship operator may charter a vessel for a lump sum freight, but on putting the vessel on the berth be able to obtain only a part cargo, or obtaining a full cargo have a total freight list aggregating less than the amount paid or to be paid for the charter. Nevertheless, the bill of lading is the only freight he has at risk, the loss on the charter not in any way being involved in the successful prosecution of the voyage.

Duty Insurance.—There is another intangible subject of insurance, which bears a striking resemblance to collectible freight or freight contingency in the scope of the risk to which the interest is exposed. This is the duty which is demanded by a government on imports. In some countries there is an export duty which like prepaid or guaranteed freight becomes part of the value of the goods and may be insured as such. Import duties, however, are peculiar to countries having a protective tariff and are collected only on goods actually received into the country,

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whether such goods are in sound or damaged condition when received. Duty insurance is confined in large measure to imports into the United States which are subject to the tariff. On such goods the government demands duty at the rate provided in the tariff and makes no allowance for depreciation due to damage, unless a package is delivered empty or is so damaged as not to be worth the duty to be paid and is abandoned. In certain cases of loss, refund of duty is allowed, but such exceptions are rare. It will be apparent, therefore, that if a case of goods arrives in a damaged condition and full duty is paid, the loss on the goods is not only the depreciation on the invoice value but the same depreciation on the increased cost involved in the payment of the duty, the value of the article being judged in the American market on the basis of duty paid commodities. Thus in determining the percentage of loss the gross sound and damaged values are compared. This percentage is applied by the underwriter to the insured value. If the duty is insured, its insured value will be added to the insured value of the goods and the percentage of loss applied to the combined amount. If on the other hand the duty is not insured, the percentage will apply only to the insured value of the goods, the loss on the duty paid being entirely at the risk of the assured. As in the case of freight contingency, there being no risk on freight until the goods arrive, the rate of premium charged on the amount of duty is low; usually one-third of the rate on the goods.

Premium is Due Even if Duty Not Paid.—Merchants, who are very conscientious in reporting shipments applicable to floating policies, sometimes fail to report duties or collectible freight on shipments insured under such policies in cases where the vessel is lost at sea, or where goods are destroyed before being laden on the vessel, on the theory that while in such cases the underwriter may be liable for the loss, the question of duty or collectible freight is not involved. When it is considered, however, that a risk having once attached the underwriter is entitled to all the premium for all the risks that would have been covered if the voyage had been fully completed, the right of the underwriter to premium on duty and collectible freight in the cases cited will be apparent. In some cases underwriters agree to make adjustments, including the amount of duty paid, without requiring

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that separate reports of duty be made, and separate premiums paid. Nevertheless, in such cases the assured pays premium for the risk involved in insuring the duty either by an increase of rate on the goods, or by increasing the advance on the basic value thus producing a larger amount against which the cargo rate is assessed.

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CHAPTER 16

WAR INSURANCE

War Insurance an Important Feature.—War insurance during the World Conflict assumed a dominating position in the marine insurance market. Not only was this so from the viewpoint of the volume of business written, but also from the interest which was directed to the field of marine insurance solely because the insuring of war perils on the seas early became one of the foremost essentials in connection with the successful prosecution of the war. Up to the outbreak of the World War marine insurance meant little to the general public, but with the sinking of vessels and the destruction of valuable cargoes it was realized that there was a profession organized and ready to assume and distribute the burden of these unusual losses. While the business of marine underwriting was well organized in the matter of insuring marine hazards, the tremendous values at risk and the unusual hazards to which maritime ventures were suddenly exposed, temporarily disorganized the insurance market.

Little Knowledge of War Insurance.—That this should have been the case is not altogether surprising in view of the fact that for almost forty years commercial activity had pursued the even tenor of its ways, slightly disturbed now and then by rumors of wars, or even by actual wars which were more or less localized and did not involve world powers whose navies ranked high in the scale of size or efficiency. The Spanish-American War, the Boer War, the Russo-Japanese War and the wars among the Balkan States had in a measure directed underwriting thought to the subject of war insurance, but the real effect of these wars caused little more than a ripple on the commercial sea. A world war between first class powers was considered almost impossible, in view of the progress which so-called civilization had made in the nineteenth century. So the generation of underwriters who were experienced in war insurance passed on, and the new generation arose firm in the belief that war on a large scale

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was something with which they would not have to deal. Accordingly little thought was given to the subject or to the vast changes modern invention would make in naval warfare and the consequent effect on war underwriting.

A Great War Thought to be Impossible.—The idea that wars of great magnitude were at an end was further strengthened by the various efforts made during the latter part of the nineteenth century and in the beginning of the twentieth, to bring the nations of the world together with the object of establishing universal peace. Conferences of the nations were held at the Hague, but the result of these gatherings showed that all nations were not yet ready to submit their differences to an International Court of Arbitration. Efforts were therefore made to establish international rules of conduct, should war occur, which would safeguard non-combatants, protect peaceful commerce on the high seas and in connection with the destruction of belligerent commerce, at least save life. Accordingly there was proposed "The Declaration of London," a code of laws for the conduct of naval warfare on the high seas, embodying the well-established principles of international law and amplifying such principles to bring them more into conformity with the advanced ideas of humanity which the Hague Conferences had demonstrated were the desires of the larger part of the nations of the World. At the outbreak of the World War this Declaration had been ratified by most of the powerful nations of the World, and had been accepted in principle by some who had not actually ratified it. Of course, like all international agreements unanimous consent was necessary, the will of the majority having no power over that of the minority. The Declaration of London was not, therefore, an enforceable international code. However, it laid down principles so well established by international laws and usage, and doctrines so in accord with the dictates of humanity that it was fair to assume that the spirit of the code would be observed in the conduct of maritime warfare.

Perils Judged by International Law.—Having had little practical experience in the underwriting of war insurance, it was reasonable for underwriters to assume that the hazards against which they would be called upon to furnish protection, were those which would occur in connection with naval warfare

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conducted in accordance with this and other codes such as the Declaration of Paris and in accordance with the proposals offered for acceptance at the Hague Conferences. In general, therefore, it was assumed that the conduct of war on the high seas would follow international law, and that underwriting based on such law would produce results satisfactory to both assured and underwriter. How far maritime warfare departed from these international rules is now well known, but underwriters early in the war fell into the common error that the war was being fought between civilized nations. Changes were made so quickly in the rules of warfare that underwriters were kept on the alert in order to make the conditions of their policies conform to the rapidly changing conditions of naval warfare.

Principles of War and Marine Insurance the Same.—The principles applying to war insurance are the same as those applying to insurance against ordinary marine perils, the difference being in the peril causing the loss and not in the fundamental principles governing the protection afforded against such loss. As previously pointed out marine policies in their original form cover against war perils, but by the insertion of the War Clause or the "Free of Capture and Seizure" Clause as it is commonly known, these perils are excluded from the protection of the policy. In its ordinary form this clause reads:

"Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war."

If it be desired to cover the risks of war the above clause is deleted, or a new one is endorsed on the policy waiving the above clause. If it be desired to insure only war perils and not marine risks, a clause is endorsed on the policy stating that the policy covers only the risks excluded by the Free of Capture and Seizure Clause in the marine policy.

Perils Insured Against.—This is of course but one method of amending the ordinary policy to include war risks or to cover war risks only. Sometimes a special clause is endorsed reciting in detail the perils of war assumed by the underwriter. This clause usually reads:

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"It is agreed that this insurance includes (or, covers only, as the case may be) the risk of capture, seizure or destruction or damage by men-of-war, by letters of mart, by takings at sea, arrests, restraints, detainments and acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations; but excluding claims for delay, deterioration and for loss of market and warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured, nor until sixty days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade and free from any claim for loss or expense in consequence thereof or of any attempt to evade blockade; but in the event of blockade to be at liberty to proceed to an open port and there end the voyage. Foregoing does not cover any war risk on shore."

The Declaration of London.—With this clause in mind it will be interesting to turn to the Declaration of London and note a few features of international law relating to the conduct of war on the high seas. As this Declaration had for its primary purpose the definition of that portion of International Law relating to cases which would come before a prize court for adjudication, it will give a fairly lucid idea of the principles upon which underwriters felt they could rely in determining the hazards assumed when covering the risks of war.

Blockade in Time of War.—The first subject treated in the Declaration is "Blockade in Time of War." Immediately on the opening of hostilities in the recent war, the Allied nations endeavored to enforce a blockade against the Teutonic Powers. Under the earlier Declaration of Paris certain rules were laid down for the conduct of a blockade and these rules were incorporated in the new Declaration of London. Accordingly it was held necessary that a blockade in order to be binding must be effective, that is, it must be sufficiently maintained to really prevent access to the enemy coastline. The mere temporary raising of the blockade because of stress of weather would not invalidate it, and unless applied impartially to the ships of all neutral nations the blockade would not be valid. The mere establishment of the blockade, however, would not make it effective, unless it were properly proclaimed to the world, specifying when the blockade would begin, its geographical limits and the period during which neutral vessels caught within

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the limits of the blockade might come out. Whether or not a neutral vessel may be captured for breach of blockade depends on her knowledge, actual or presumptive of the blockade, but it will be assumed that such knowledge was had if the vessel left a neutral port subsequent to the notification of the blockade having been received by the Power to which such port belongs. It is further ruled that the blockading forces must not bar access to neutral ports or coasts. Regardless of the question of ultimate destination of a vessel or of her cargo, it is laid down that she cannot be captured for breach of blockade, if at the moment, she is on her way to a non-blockaded port. Under the Declaration a vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned unless it is proved that, at the time the goods were shipped, the shipper neither knew nor could have known of the intention to break the blockade.

Contraband of War.—The second chapter of the Declaration of London refers to the subject of Contraband of War. The word contraband is derived from the original warnings served by belligerents on neutrals in early wars to the effect that certain trades were contrary to their ban or edict. Under the heading of contraband in the Declaration there are given three lists of articles, the first of which can, without notice, be treated as absolute contraband. These articles are such as are directly used in the offensive or defensive operations of warfare. It is also provided that other articles exclusively used for war may be added to the list of absolute contraband by a declaration which must be proclaimed to all nations. The second list is composed of articles which, while capable of being used in war, are also useful for the purposes of peace. These, without notice, may be treated as contraband under the name of conditional contraband. As in the case of absolute contraband, articles may be added to the list of conditional contraband if they are of the same character as the enumerated articles, upon due notice being given to other nations. It is provided in the third list that the articles therein enumerated may not be declared contraband because these articles are not presumed to be useful in war. In view of the devices of warfare developed in the recent conflict, in the line of explosives, ammunition and offensive weapons, some of the articles included in this latter list such as raw cotton, used in the

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manufacture of gun cotton, silk used in airplane manufacture, rubber in the manufacture of shells and in the equipment of automobiles, present an anomalous situation.

Absolute Contraband.—Absolute contraband is liable to capture if it can be shown that it is destined to territory belonging to or occupied by the enemy or the armed forces of the enemy, it being immaterial whether the carriage of such goods is direct or necessitates transshipment by land or water. The method of proof of such destination is carefully set forth in the Declaration. The articles contained in the list of conditional contraband are liable to capture only if it can be shown that they are destined for the use of the armed forces or of a governmental department of an enemy state and provision is made for determining whether or not such goods are so destined. Conditional contraband is not liable to capture unless it is on board a vessel bound for territory belonging to or occupied by the enemy or for the armed forces of the enemy and is not to be discharged at an intervening neutral port.

Carriage of Contraband Cause for Condemnation.—A vessel carrying absolute or conditional contraband may be captured on the high seas and will be condemned if the contraband reckoned either by value, weight, volume or freight, forms more than one-half the cargo. The contraband itself is liable to condemnation and other goods belonging to the owner of the contraband and on board the same vessel are also liable to condemnation. In case a vessel is encountered on the high seas while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on the payment of compensation. The same rule applies if the master, knowing of the outbreak of hostilities or of the declaration of contraband, has had no opportunity of discharging the contraband. Where a vessel is stopped and contraband found but not in sufficient proportion to condemn the ship, it is held that she shall be at liberty to proceed if the master is willing to hand over the contraband to the belligerent ship. The captor is at liberty to destroy contraband received under these conditions.

Unneutral Service.—The third chapter of the Declaration refers to unneutral service, it being declared that a vessel is

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subject to condemnation, first, if she is on a voyage undertaken with the special purpose of transporting individuals who are members of the armed forces of the enemy, or for the purpose of transmitting intelligence to the enemy; and second, if knowingly, the vessel transports a military detachment of the enemy or individuals who in the course of the voyage directly assist the operations of the enemy. If the vessel is so used, cargo belonging to the owner of the vessel is also liable to condemnation. Furthermore a neutral vessel will be condemned and will, in a general way, receive the same treatment as an enemy merchantman, if she take part directly in hostilities, or is under the orders or control of an agent of the enemy government, or is exclusively in its employ, or is engaged exclusively in the transport of enemy troops, or in the transmission of intelligence in the interest of the enemy.

Destruction of Neutral Prizes.—Chapter four of the Declaration relates to the destruction of neutral prizes. It is held that a neutral vessel which has been captured may not be destroyed by the captor, but must be taken into port for the determination of all questions concerning the validity of the capture. An exception, however, is made in cases where the belligerent warship which has made capture of a vessel subject to condemnation would endanger herself or would involve in danger, the enterprise in which she was engaged, if she attempted to bring the captured vessel into port. Nevertheless, if conditions arise which render excusable such destruction all persons on board the captured vessel must be placed in safety, and the ship's papers preserved in order that the validity of the capture may later be determined. The circumstances warranting the destruction of a neutral prize before the validity of the capture is determined must be of an exceptional nature, otherwise the captor must pay compensation to the interested parties, and the question whether or not the capture was valid will not be examined. If, on the other hand, the destruction is held to be justifiable, but the capture invalid, then the captor must pay compensation to the interested parties, in lieu of restitution which cannot be made. So the owner of goods which are not subject to condemnation, but which are destroyed with the vessel, is entitled to compensation.

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Transfer of Vessels. Convoy. Right of Search.—Other chapters follow relating to the transfer of enemy vessels to a neutral flag, to the method of determining the enemy character of vessel and cargo, and to the rules relating to ships sailing under convoy. It is further provided that forcible resistance to the legitimate exercise of the right of stoppage, search and capture, involves in all cases the condemnation of the vessel. The cargo is treated as cargo on an enemy vessel and goods owned by the master or owner are treated as enemy goods. If the capture of vessel or goods is not upheld by the prize court, or the prize is released without judgment being given, the parties interested have the right to compensation, unless the capture itself was justifiable.

International Law Not Observed.—The above outlined principles, in general, were those by which underwriters felt that they could be governed in the issuance of insurance against war perils. It was, however, early perceived that the rules observed in earlier wars and the rules which had been proposed for the conduct of future wars would not be adhered to in this conflict, which quickly became worldwide and involved warfare with nations who had no respect for solemn treaty obligations and who had no reverence for International Law. Accordingly, the Allied nations, while striving to adhere to the principles of the Declaration of London and of international law in general, were gradually forced to give a broad interpretation to those principles, and in many cases to abrogate them. That such action did at times do violence to the rights of neutral nations, cannot be doubted, but that such action was justified considering the issues involved in the conflict is now generally admitted.

Doctrine of Ultimate Destination. Preëmption.—Thus underwriters soon discovered that the blockade which was being enforced included neutral coasts and because of the long coastline involved, could not really be effective. The doctrine of ultimate destination was revived and extended, when it was proved beyond doubt that the ports of certain neutral countries were being used merely as transhipment points on the route to the enemy. Furthermore, it was found that owing to the secret methods used by the enemy to bring forward contraband, the search of vessels at sea was impracticable. This resulted finally in all vessels destined for neutral ports of countries adjacent or contiguous

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to enemy territory being taken into Allied ports and there searched. This involved serious losses even when it was found that no contraband was on board. Furthermore captured vessels were exposed to the dangers of navigation in belligerent waters protected by mine fields and other war devices. That the reason for making these captures was a justifiable one was amply demonstrated by the fact that manifests were found to be improperly drawn describing packages as containing lawful commodities which in reality contained absolute contraband of war. Furthermore, the Allied governments exercised the right of preëmption; that is, articles which were free from capture under international law, but which it was clear would give aid or comfort to the enemy, were taken by the Allied governments and what they deemed just compensation therefor was made to the owners. The lists of contraband articles changed so rapidly that it was almost impossible for underwriters to follow them.

Unforeseen Perils.—On the other hand the Teutonic Allies having no ports of their own into which they could bring prizes for adjudication, sank neutral vessels on the high seas in absolute violation of the rights of neutral nations. While the Allied nations endeavored to ease the burden of their search and blockade by making examination of vessels at the port of shipment and by the granting of licenses for the forwarding of goods, and by the approval of shipments consigned in certain ways as to the Netherlands Overseas Trust, the Teutonic Allies carried on their illegal seizures and sinkings with increasing disrespect for the rights of neutrals and with disregard for the rights of enemy non-belligerents and neutral citizens respecting safety of life and limb, provided for under international law. Finally with the issuance of a decree establishing a so-called "barred zone," and the unrestricted destruction of vessels in the submarine campaign instituted by the German Government, underwriters found themselves confronted with a situation not hitherto approached in any previous war.

Neutrality Warranties.—In order to obviate some of the difficulties which were encountered in the insurance of war perils, clauses were devised from time to time varying the protection afforded. Neutrality clauses in various forms were drawn up, which warranted that during the term of the insurance the prop-

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erty insured was warranted consigned to American or other neutral citizens, firms, or corporations, and that the names and addresses of such consignees would be stated in the bill of lading. The property was also warranted for consumption in some specified neutral country. This warranty served to protect the underwriter from claim if deception was being practised in regard to the neutrality of the shipment, the breach of the warranty voiding the insurance.

"Free of British Capture" Clause.—A clause further restricting the liability of underwriters in connection with the right of search and capture exercised by the Allied Governments was, early in the war, inserted in many policies covering shipments to neutral countries. This warranty came to be the most used one in connection with war insurance and in its common form, reads: "Warranted free from any claim arising from capture, seizure, arrest, restraints, preëmption or detainments by the British Government or their Allies." After the entrance of the United States into the war it became customary to add the "United States Government" to this clause. Other forms amplifying the meaning of this clause, but having the same general purpose were used in connection with war insurance.

Trading with the Enemy.—Early in the war the Allies discovered that citizens of neutral countries, in violation of the principles of neutrality, were giving aid and comfort to the enemy in many ways. This led to the promulgation of legislation generally known as "Trading with the Enemy" acts under which definition is made of enemies and of what constitutes trading with the enemy. Upon the entrance of the United States into the war similar legislation was passed by Congress. Under the power of these Acts lists were prepared containing the names of persons, firms and corporations domiciled in neutral countries who were classed as enemies and subject to treatment as such. Vessels owned by such enemies were posted as subject to treatment as enemy vessels. These lists known as "Proscribed" or "Black" Lists furnished information of neutral subjects or vessels which would be treated as enemies by the Allied Governments. It was not possible to keep informed of the many changes in such lists and accordingly clauses were drawn providing that the protection of the policy did not extend to any of the firms,

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corporations or individuals coming within the ban of such acts. As already indicated, clauses of this purport are still embodied in many policies whether marine or war issued in this country.

Licenses.—Neutral governments, in order that they might be able to obtain supplies for their citizens, entered into arrangements with the Allied Governments, by which goods consigned to certain governmental corporations and warranted for consumption in such countries, would not be subject to capture, seizure, detention or destruction. The most prominent of these corporations was the Netherlands Overseas Trust, to whose consignment vast quantities of stores entered into Holland unmolested. A warranty of consignment to this Trust was inserted in many war insurance policies, full war protection being afforded in such cases. In connection with certain commodities, licenses were granted by the Allied Governments permitting the importation into neutral countries of definite quantities of these commodities under restrictions set forth in these licenses. Full insurance against war perils was also granted on goods warranted shipped under such licenses.

War and Marine Risks Separately Insured.—While in many cases marine policies were amended to cover war risks, in a large percentage of cases all or a part of the war risk was placed separately from the marine insurance. This condition soon led to considerable embarrassment in certain cases where it was doubtful whether the loss which had overtaken the insured subject was due to a marine or to a war peril. Where both war and marine insurance were covered in the same policy or with the same underwriters in separate policies, and the loss was a valid claim under either the war or the marine insurance, the only doubt being as to which policy was liable, the underwriter would settle the claim. Where, however, the war and marine insurance were placed with different underwriters, each would deny liability. Many such cases were carried into the courts, especially in connection with so-called missing vessels, that is, vessels which sail but never arrive at their destination nor from which any tidings are received indicating the cause of loss. In such cases there had always been a presumption that the loss was due to marine perils, but owing to the changed conditions of warfare, to the unrestricted use of submarines, and to the orders of the German

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Government to "sink without a trace," this presumption in large measure disappeared and individual losses were decided on their merits. In other cases where the full facts as to the cause of loss were known, there was doubt as to whether the loss was a marine or war loss, and in some cases it was even doubtful whether the loss occurring was one covered by either a war or a marine policy.

Doubtful Losses.—Such a case was that of the Str. Canadia, which in the early months of the war was stopped off the Butt of Lewis by a British cruiser and boarded by an Admiralty officer. In order to facilitate examination of cargo, the steamer was ordered to Kirkwall. Against the advice of the master of the vessel, the Admiralty officer ordered the vessel to proceed over a dangerous course in the night, with the result that the vessel was run ashore and wrecked. The underwriters on the marine policies claimed that this was not a marine loss, the vessel being already captured and in charge of the Admiralty. The war underwriters, on the other hand, claimed that the loss was due to a marine peril, notwithstanding the fact that an Admiralty officer was on board. Eminent counsel gave opinions pro and con, some even holding that the loss was not one contemplated by the coverage of either policy.

Intermediate Liabilities. Explosion Hazard.—To obviate such disputes caused by the placing of war and marine insurance with different sets of underwriters, clauses were devised by which either the marine or the war underwriters agreed in consideration of additional premium to assume liability for risks which might fall between the marine and the war policies. Furthermore, in connection with the Halifax explosion a grave question arose as to whether the resultant losses were due to a marine or a war peril or whether explosion of the nature causing the destruction in question was covered by either form of policy. Accordingly marine policies were amended to include the risk of explosions not covered by war policies.

New War Devices.—Aside from the breaches or modifications of international law, which the belligerents made or introduced in the late conflict, the war perils insured against differed little from those suffered in previous wars. The outstanding difference was the world-wide scope of the conflict and the devices used

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to destroy enemy commerce. The destruction of ships from within and from without was accomplished in ways and by methods that could hardly have been conceived prior to this war. Bombs placed in the cargo, attached to clock devices set to cause explosion and destruction on the high seas, or to cause fire at sea, and bombs attached to the rudders of vessels, which by the natural working of the rudder would gradually wind up the mechanism which would finally explode the bomb, were but typical of the diabolical devices used in the destruction of vessels on the high seas. The establishment of mine areas covering many square miles and extending into international waters, with the possibility that many of the mines would break loose and become floating traps for innocent vessels, as well as the removal of necessary aids to navigation, all produced conditions, perhaps not altogether new in warfare, but at least unprecedented because of the extent of such operations.

Submarines and Commerce Raiders.—The two outstanding perils which the underwriter was called upon to assume, and which were assumed without any restriction of liability by clause or otherwise, were the destruction of vessels by submarines and by commerce raiders. The activities of the submarines have, of course, compassed the bulk of the destroyed commerce, but the operation of these sea wolves was in a measure limited geographically by the physical limitations of the craft themselves, whereas the activity of commerce raiders was world-wide. The result of this was that the underwriter could form a fairly correct estimate of the value of the submarine hazard, whereas the losses caused by raiders usually occurred after a period of comparative freedom from losses, in sections presumed to be free from belligerent vessels.

New and Unusual Hazards.—In addition to the fact that the operation of the submarines in the destruction of neutral vessels was in a great many instances in direct violation of the rules of international law and the dictates of humanity, the use of this type of man-of-war produced new and unusual perils to navigation. The submarine operating under water a part of the time, produced a menace to navigation similar in some respects to a submerged derelict, and not a few serious casualties resulted through collisions with submerged submarines. Not alone

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did casualties occur in international waters, but in territorial waters. In harbors, vessels collided with submerged submarines and instances were reported where a submarine attempted to emerge directly beneath a vessel causing serious damage to both craft. The nature of the casualty, whether a war or a marine peril, in such cases became a question of dispute by underwriters with conflicting interests.

Airplanes.—The perils of war for which the underwriter assumed responsibility were not only on the seas, and under the seas, but for the first time in naval warfare, above the seas. Destruction by airplane or airship became one of the war perils included under the all embracing term "men-of-war." While the risk from this cause was not a great hazard compared with that due to other causes, the air raids made on the allied countries were not confined to destruction on land but in some cases involved the destruction of ships in the harbors of these countries. Here again as in the case of the submarine, the hazard was localized by the physical limitations of the war machine itself and accordingly a more correct estimate of the peril involved could be made.

Government War Bureaus.—Perhaps the most interesting development of the recent war, in regard to the subject of war insurance, was the entrance of various governments, both belligerent and neutral, into the field of war underwriting. Considering the rapidity with which the war hazard developed and the tremendous values which were involved in commercial sea ventures, it is not at all surprising that the underwriting market should have become demoralized at the commencement of the war, creating a situation of widely fluctuating rates, and a condition where the large values at risk on extra hazardous routes could not be absorbed by the then existing insurance market. Private underwriting being conducted for the primary purpose of producing a fair return of profit on invested capital, it could not be expected that those entrusted with this capital would hazard its safety in underwriting, which appeared certain to result in loss. The government war insurance schemes were therefore welcomed by the underwriting fraternity and their conduct was entrusted to some of the ablest underwriters in the various countries. Not designed for profit, but for the protection of the commerce of each respective country, rates were of secondary

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consideration. Notwithstanding temporary fluctuations in the private market, the government rates held steady, being increased or decreased only after a continuous period of heavy or light losses. The result was that at times the rates in the private market would fall below the government market, in which event business would fall away from the bureaus. In fact, on equal or nearly equal rates, merchants and shipowners preferred the private market, owing to the more elastic conditions granted, and the absence of the red tape inevitable in the conduct of governmental operations. However, the large capacity of the government bureaus and their willingness to cover risks which could be placed only with great difficulty in the private market, made the bureaus a vital factor in the commercial activity which continued despite the perilous conditions surrounding much of the overseas commerce of the world.

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CHAPTER 17

REINSURANCE

The Destruction of Large Values.—It has frequently happened that the World has been shocked by some great marine casualty, such as the destruction of a giant ocean greyhound involving perhaps the loss of many lives, but in any event quickly causing the destruction of property valued at several millions of dollars. Or it may be that a short paragraph is noted in the daily papers announcing that the Str.—, loaded with 20,000 bales of cotton ran ashore on the Coast of Ireland in a fog, that the crew were saved, but that the vessel and cargo would be a total loss. The loss is estimated at $1,500,000 for the vessel and $6,000,000 for the cargo. Gigantic values, surely large enough to cause embarrassment to any but the strongest insurance company. The destruction of one of these great vessels where no loss of life is involved is quickly forgotten by the general public, but after the event has become but a memory to the lay mind, the underwriters are called upon to indemnify the owners of vessel and cargo for the losses suffered.

Reinsurance.—It may be and it usually is the case that the insurance on the vessel itself is widely distributed, but it often happens when there is a complete cargo of one commodity as in the cotton case cited in the preceding paragraph, that the insurance on the whole cargo will be placed with two or three insurance companies. How can these companies stand the strain of a heavy loss of one or two million dollars in a single venture, with the possibility but not the probability considering the law of averages, of suffering in a single year one or more similar losses? As losses should be paid out of earnings and not out of capital how can such losses be absorbed without making inroads into capital and surplus? The answer to the query is found in the word *reinsurance* which makes possible the issuance of policies for large amounts and what is still more important, makes certain the payment of large losses, if incurred.

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The Distribution of Risks.—When the Str. Titanic struck an iceberg and sank, carrying with it scores of helpless human beings, and cargo comparatively small in quantity but relatively large in value, the marine insurance world was temporarily stunned at the magnitude of the disaster, and more so considering that the vessel was on her maiden voyage and that the insurance on her had not been in force long enough to add any considerable sum to the earnings of the underwriters. But within a few weeks the owners of the vessel were reimbursed for the loss, and what had seemed a terrible financial blow had after the first shock caused but a ripple on the marine insurance sea. Into every corner of the marine insurance world, in Europe, America and the Far East, either because of direct insurance or through reinsurance the loss was felt and contribution to the indemnity was made.

Growth of Reinsurance.—Reinsurance has increased greatly in the last quarter of a century, since the dawn of the new commercial era of big business. The values at risk in oversea commerce are enormous, and more and more has it come to pass that single enterprises will engage the full capacity of a vessel. But large enterprises have become large in part by the elimination of unnecessary detail, and the managers of such enterprises have been unwilling to accept protection in small amounts widely distributed over the underwriting field. They have preferred and demanded concentration of protection in a few strong companies, leaving the distribution of the heavy risk to the underwriters. This has, it is true, relieved the property owner of the detail involved in a multiplicity of policies, but has thrown it in some measure upon the underwriter. However, by contract participating and excess reinsurance this detail is reduced to a minimum, and the dividing and distributing of risks continues until all the recognized underwriting capital in the markets of the world is pledged directly or indirectly for the protection of these jumbo lines.

Jumbo Lines.—Doubtless this has resulted in a degree of dissatisfaction among some of the smaller underwriters, who would prefer to have the prestige which large direct lines give, rather than the more certain income obtained from a wide distribution of smaller lines. Efforts have been made on behalf of the smaller

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underwriter to cause a wider distribution of business by limiting the amount of reinsurance which a company can obtain to, say fifty percent of the written line. While such legislation might succeed in its purpose of causing a wider distribution of direct underwriting, it would result in other evils more baneful in their effects than that for which a cure was sought. For instance, the larger companies in order to retain their prestige might be induced to hold larger lines than prudent underwriting practice would warrant, while many of the smaller companies, not well known, would probably receive few direct lines, thus losing the steady income which reinsurance lines furnish. While it might be possible in relation to fire insurance to conduct business on the basis of a wide direct distribution of risk, just as it would be possible to give a wide direct distribution of the insurance on hulls in marine underwriting, such a method of transacting insurance would encounter insuperable obstacles in the placing of cargo insurance.

Necessity for Large Limits.—This will be evident when, for example, it is considered that in the importation of raw and manufactured products, it often happens that the first advice of shipment that a merchant has is a cable announcing that the Str.—has left Singapore with $1,500,000 worth of crude rubber at his risk. Were it not possible for the assured to contract in advance under an open policy or policies for protection sufficiently large to take care of a shipment of this size, arrangements would be made to have the goods shipped insured, that is on c.i.f. terms, the insurance being placed in foreign markets. For the merchant in this country to place in advance contracts with scores of underwriters in amount ranging from $5,000 to $200,000, the ordinary range of capacity of the various companies, provided they were restrained by law from reinsuring more than fifty percent of their interest, would be impracticable if not impossible, because underwriters would not care to engage their maximum capacity, when such a large shipment was an exception and the average declaration did not exceed $250,000. Under the present system a few underwriters will jointly undertake the insurance of large maximum lines, and by participating and by excess reinsurance obtain even on smaller declarations a fair run of business. On the other hand when business eventu-

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ates quickly and a large amount of insurance is needed within a few days or sometimes a few hours, were it not possible to place large lines, permitting the individual company to distribute the risk, modern business would encounter a handicap which would seriously interfere with the success of commercial undertakings where time is the controlling factor. There is ordinarily enough business to give every company sufficient direct lines commensurate with its size, as even the largest company will not assume more than a limited number of open policy accounts, that number being controlled largely by its reinsurance facilities, while many small accounts will be placed with the smaller but equally safe companies. Safety cannot always be judged by the size of the company, but rather by the soundness of its underwriting methods. Most of the large companies started on a small basis but by conservative methods have attained success.

Retained Lines.—Fortunately legislation of the character described has not been successful, although within recent years a bill of this character passed the legislature of one of the Middle Western States, only to be vetoed by the governor. It is probable, however, that from time to time, similar legislation will be proposed, and it is well to be forearmed against a seemingly beneficial form of aid to small companies which would result adversely to all underwriting and put a serious handicap on business in general. In New York State, the legislature has recognized the peculiar conditions surrounding the placing of marine insurance and has removed all restrictions as to the amount of liability which a marine company may assume, leaving the reduction of retained lines to the individual judgment of each company. It is probably true, that in every case, except where through some inadvertence the procurement of reinsurance has been overlooked, marine underwriters will carry as a retained line much less than the prescribed limit of ten percent of the capital and surplus, to which fire and other forms of insurance are limited by law.

Purpose of Reinsurance.—Reinsurance then is the method by which liability is distributed over the entire underwriting market. It is a branch of insurance which directly concerns only underwriters, but the insuring public is indirectly interested, in that by virtue of the system of inter-reinsurance underwriters are enabled

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to spread their liability over vast numbers of risks, with a moderate amount of liability in each risk, thus stabilizing the business. It was not until recently that the question of reinsurance became a matter of general interest to the public. When, however, it was revealed that through the processes of reinsurance our enemies could readily obtain information in regard to the movement of ocean steamers, and in the fire reinsurance market, information as to the location of manufacturing plants in which government contracts were being executed, it came home to the public that there was a vast and intricate system of distributing liability over the underwriting markets, not only of this country but of the entire world.

Reinsurance Not Different in Principle.—Reinsurance in no wise differs in principle from any other form of insurance. The contractual relation is one between underwriter and underwriter instead of between merchant or shipowner and underwriter, but aside from this, the contract of reinsurance resembles *in toto* the ordinary mercantile contract of insurance. An underwriter obtains an insurable interest in each piece of property which he insures because he enters into a relation in which he is financially interested in the continued existence of such property. He will be damnified by its injury or destruction through the necessity of reimbursing the owner for the damage or loss incurred. There can, therefore, be no doubt that underwriters have an insurable interest in property which they insure. This, then, being the case, there is no difference in principle between a contract of insurance and a contract of reinsurance. However, in actual practice many conditions peculiar to reinsurance appear and some consideration of them will aid in giving a better understanding of the subject.

Special and Floating Reinsurance Contracts.—As in the case of direct insurance, special contracts relating to a specific risk may be issued, or open or floating contracts of reinsurance may be arranged, limited as to liability, time and geographical scope. Reinsurance may follow the precise terms and conditions of the original insurance or the original underwriter may only wish to reinsure or be able to obtain reinsurance against a part of the risks which he directly assumes. Thus, the original underwriter may insure property, subject to average, but not be able

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to find any other underwriter who is willing to reinsure on any but free of average terms. Reinsurance policies usually contain what is commonly termed the reinsurance clause which reads somewhat after the following form, *i.e.:*

"Being a reinsurance subject to the same clauses and conditions as the original policy or policies of the said ——— Insurance Company, whether reinsurance or otherwise, and to pay as may be paid thereon; but subject to the ———," any exceptions made to the original conditions, such as the free of particular average clause, being inserted in the final blank space, or in a separate clause and referred to in this blank space.

Reinsurer Bound by Acts of Reassured.—The reinsuring company, by this clause or by one of similar import, agrees to be bound by the underwriting judgment of the original underwriter as evidenced by the policies issued by him, and to which the reinsurance contract in question relates, except in so far as exception to certain conditions may be embodied in the reinsurance policy. Furthermore, the reinsuring underwriter agrees to abide by the adjustment and mode of settlement arranged between the direct underwriter and his assured. When the amount of a loss is large as in the cases cited in the opening of this chapter and the reinsurance is placed locally, the financing of the payment of loss is a matter of considerable preparation. For instance, suppose the X Insurance Company has suffered a loss of $1,500,000. Were it to pay this entirely out of its own funds, it might require the liquidation of some of its securities, perhaps at a sacrifice, or their hypothecation as security for a loan, as a company seldom has uninvested a sum as large as that named. In actual practice, however, the settlement of such a loss merely calls for the outlay on the part of the original underwriter of an amount equal to his net retained line. Several days before the claim is to be settled notice is sent to the reinsuring underwriters that upon a certain day the loss is to be paid and requesting that payments covering their proportion of the loss be made to the original underwriter on or before that day. The underwriter draws his check for the entire amount of loss, depositing to his credit on the same day the checks of the reinsuring underwriters for their proportion of the payment, so that at the close of business on the day of payment the bank account of the original underwriter is depleted only to the extent

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of his retained line. Of course, this mode of settlement can be availed of only when the reinsuring underwriters are located in the same city as the original underwriter and are willing thus to assist him. They may, however, refuse to reimburse him until he has made actual settlement of loss. Where reinsurance is placed in other cities or in foreign markets it is not practicable to settle claims in this manner.

Limitation of Liability.—While it is true that under the Law of New York State where a large proportion of the marine insurance business of the United States is transacted, marine companies are unrestricted as to the amount of liability which they may assume and retain, as a matter of practice underwriters have definite limits which it is their custom to retain on each particular class of business. With many contracts outstanding there is no method by which an underwriter can control his liability. He does, to be sure, have a limit of liability under each contract which he issues, but in the actual processes of shipment, many contracts may become operative in connection with shipments by a single vessel, with the result that the underwriter may have at risk by such vessel a liability greatly in excess of his normal retained line. In order to provide against this contingency underwriters take out with their fellow underwriters contracts of reinsurance, placed as a general rule, either as share reinsurance or as reinsurance attaching on the excess of a fixed amount.

Share or Participating Reinsurance.—In the case of share, or participating reinsurance as it is sometimes called, the underwriter agrees to give to his reinsurers, a definite proportion of all his business moving over specified routes of ocean travel or a definite share in a certain line of business moving over the described routes of trade. Sometimes participating reinsurance involves only a single account placed with the original underwriters, the reinsuring underwriters automatically covering under a prearranged contract a definite percentage of the insurance assumed by the original underwriter. It may happen, that notwithstanding the protection afforded by such share insurance, there is still the possibility of a line remaining greater than the normal line which the underwriter desires to retain. To provide against this contingency the underwriter contracts for what is known as excess reinsurance.

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Excess Reinsurance.—Under this form of contract reinsurance, the geographical and time limits are definitely set forth and a clause is inserted to the effect that such reinsurance is to attach at and from the first port within the geographical limits specified, at which the original underwriter has an excess under his various policies considered as a whole regardless of whether such policies cover direct lines received from his assured or reinsurance received from another underwriter. This excess may attach when the original underwriter has a retained line of any fixed amount, say $100,000, by any one steamer or at any one place as described in the contract, and will cover such excess up to the limit of the excess policy on the commodities specified therein. It is usually provided that in determining the amount applicable to the excess reinsurance policy, the various interests of hull, freight and cargo, including specie, profits and any other interests are to be taken into account. The original underwriter keeps all of these interests so long as the retained line does not exceed $100,000. In determining the retained line for the purpose of excess reinsurance a further factor enters into the calculation. This is the question of share reinsurance, which, according to the terms of the ordinary excess reinsurance policy, is first deducted, and whatever remains at the risk of the original underwriter after such deduction is made is his net retained line. It may be that the reinsurance contract is taken out to cover only certain commodities, such, for instance, as wool and hides under a policy covering from ports on the River Plate to Atlantic or Gulf ports of the United States. If the net retained line in such case exceeds $100,000, then there is reported under the Excess Re-Insurance Policy wool and hides only until the retained line of the original underwriter is reduced to $100,000 or the amount insured on wool or hides is exhausted or the limit of the excess contract is reached.

Effect of Determination of Excess Amount.—It should be observed that once an excess has attached under an excess reinsurance policy, it continues to attach throughout the continuance of the risk as per original policy or policies, notwithstanding any discharge, transhipment or division of interest and any claim is settled pro rata. In other words, when an excess is determined, excess reinsurance becomes precisely of the same nature

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as share or participating reinsurance. For example, in the case of the wool and hides policy cited, if all the wool and hides were declared to the reinsuring underwriters, the reassurer would assume the whole burden of the risk on wool and hides, provided the reinsurance was placed on original terms and conditions. If, on the other hand, the declaration gave a part of the wool and hides to the reinsuring underwriter, the retained line of the original underwriter consisting in whole or in part of wool and hides, the original and reinsuring underwriters would each be liable for their pro rata proportion of any loss incurred on these commodities as in the case of share reinsurance. Excess reinsurance of the character under discussion differs from share reinsurance only in the method employed in determining the amount applicable to the reinsurance contract.

Division of Interest.—Division of interest frequently occurs through the transhipment of cargo. A steamer loads at a distant port a large quantity of goods on which an excess accrues. The vessel proceeds to a transhipping port, still within the geographical limits of the excess contract, where she discharges her cargo, which instead of being reladen on a single steamer is reladen on two steamers, on neither of which the original underwriter has an amount equal to his retained line under the excess policy. Notwithstanding this division of interest, the relation between the original underwriter and his excess reassurers is not disturbed, the status of the risk having been fixed at the original point at which the excess attached, the insurance having assumed the nature of share insurance, and the underwriters, original and reassurer continue through to destination by the transhipping steamers, each with his pro rata share of the cargo on the original steamer.

Complications at Transhipping Points.—However, a complication may arise at the transhipping point, if other cargo is laden on the transhipping steamers in such quantity that the unused portion of the net retained line of the original underwriter is exhausted and an excess amount results which the reinsuring underwriter can take without exceeding the limit of the reinsurance contract. Whether or not this new cargo can be brought into the reinsurance relation will depend upon the care that has been exercised in drawing up the reinsurance contract. A

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further complication will arise if cargo, which originates at ports beyond the geographical limits of the reinsurance policy, is also loaded on the same transhipping steamer at the transhipping port and is at the risk of the original underwriter. It may further appear that a portion of this cargo originating outside the limits of the reinsurance policy in question already has reinsurance on it. The possibilities of complications arising in connection with the placing of excess reinsurance are endless, and no little degree of skill is required to so word these policies that the protection desired will really be afforded by the terms of the contract.

Prior Losses Under Excess Policies.—It is customary to insert in excess reinsurance contracts a clause by which it is agreed that in the event of any claim arising in craft or on shore prior to shipment or on board the vessel before completion of loading, the excess shall be ascertained by taking into account the whole of the interest shipped or intended to be shipped by the vessel declared, the loss to be settled pro rata. The effect of this clause is, that if it can be definitely shown that certain goods which have been damaged or destroyed before being laden on the vessel in question, would, if not destroyed, have been loaded on such vessel in the ordinary course of transportation, and if they had been so loaded, their value, added to that of the goods which actually were laden, would have produced an excess declarable under the contract—the reinsuring underwriter will be liable for his pro rata share of such loss. If the loss occurs to goods on board a lighter at, or destined for, the steamer or to goods on the wharf at which the steamer is loading, it is not a difficult matter to determine whether or not the lost or damaged goods would have been laden on board the steamer. But if the loss occurs on the railroad or on a connecting steamer, the problem of determining whether or not the goods would have connected with the steamer on which the excess would have accrued, becomes a matter of considerable difficulty, and in cases where through bills of lading giving the name of the connecting steamer are not issued, the problem is practically impossible of solution.

Excess Loss Reinsurance.—Under the form of excess reinsurance discussed up to the present point, it has been assumed that the original underwriter will know the exact amounts that are at his risk by any named steamer. On many routes, however,

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such as the coastwise routes of the United States, it is a practical impossibility for an underwriter to obtain tracings, that is, information as to the definite steamer by which goods are forwarded, insurance being declared merely by naming transportation lines instead of steamers. There is also the possibility of an underwriter unwittingly having at risk a liability greatly in excess of his normal line, yet his inability to obtain definite information as to this precludes his obtaining excess reinsurance of the character previously considered which has as its basis the determination of retained lines. True, the underwriter may divide his accounts by placing share reinsurance, thus reducing his liability, but this still leaves the possibility of heavy liability being unwittingly assumed. To overcome this difficulty another form of excess reinsurance is obtained under which the measure of liability is not the amount at risk but the amount of loss incurred.

Speculative Reinsurance.—An underwriter may be willing to face the possibility of suffering a loss of $100,000, but may feel that any loss greater than this amount would be out of all proportion to the average amount of liability which he purposes to carry. Accordingly he contracts with other underwriters to assume liability for any loss occurring within certain geographical and time limits in excess of $100,000 up to an amount which he concludes would represent his greatest possible liability on routes by which he receives no definite names of forwarding vessels. For such insurance a fixed annual premium is charged based on such estimated figures as the original underwriter may be able to furnish. Such reinsurance is, of course, very speculative, the protection afforded, if the excess attachment point is high, being practically against total or constructive total loss only, and in the absence of losses, it is impossible to determine whether or not the reassurer has any liability at risk. However, such insurance does, at least, ease the mind of the original underwriter, in that he is reasonably certain if he has procured sufficient excess reinsurance of this character that he cannot suffer a loss greater than he is willing to bear.

Shore Reinsurance.—A similar situation exists in connection with the interior risk which is involved in the transportation of goods and which is ordinarily insured in connection with the ocean risk. Shipments move over widely diverging routes to the

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great seaboard ports resulting in the possibility of an underwriter having excessive lines at the railroad terminals or on the steamship piers. A similar condition exists at ports of destination or at transhipping ports, where because of the arrival of two or more vessels at one time, congestion may arise at these ports which will result in an underwriter unwittingly having heavy lines at risk in a single location. Since it is practically impossible to trace the lines at risk in such locations, underwriters contract for excess fire insurance based on the amount of loss which may be incurred. They will assume full liability for all loss not exceeding a fixed sum, say $50,000, while the reinsuring underwriters agree to reimburse the original underwriter for any losses in excess of this amount, but not exceeding a fixed limit. The possibility of loss under these excess contracts is not great, as they are not interested in minor losses, and the rate of premium charged is, therefore, comparatively low.

Co-insurance.—It will be noted that under the ordinary form of excess insurance where the liability is predicated on the amount at risk, the reinsuring underwriter becomes a co-insurer. His liability is measured by comparing the amount declared under the reinsurance policy with the total amount insured on such goods by the original underwriters. However, under excess reinsurance based on losses incurred, there is no question of co-insurance involved.

Special Reinsurance Risks. Flat Reinsurance.—While the consideration of reinsurance, up to this point, has involved the discussion of open contracts, reinsurance is constantly placed as special risks, and the same principles apply to this form of reinsurance, although the complications involved are not apt to be as great as those that occur in the placing of open reinsurance contracts. Special reinsurance is placed on either the participating or excess basis or may be placed flat. That is, the original underwriter may reinsure a definite amount, say $50,000, on a certain risk with another underwriter, such amount not being subject to change if the retained line of the original underwriter is materially reduced or cancelled in full. Ordinarily, if the original line is never at risk, the underwriter with whom the flat reinsurance has been placed must consent to its cancellation. Sometimes flat reinsurance is placed without right of cancellation, in which

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event the original underwriter must pay the reinsurance premium notwithstanding the fact that he receives no original premium and that his reinsuring underwriter incurs no risk. There is a degree of justification for this attitude in that the reinsuring underwriter, by accepting this flat reinsurance, may have engaged his entire capacity by the vessel in question, and as notices of short interest or cancellation are usually received by the original underwriter after the vessel has sailed or when it is about to sail, the reinsuring underwriter is precluded from obtaining new insurance to replace that which it is sought to cancel, and thereby loses business that otherwise might have been his. The word "flat" as used in connection with reinsurance means closed or determined, indicating that the transaction is a completed one and not subject to change.

Reinsurance Pools.—It quite frequently happens that after a long period of bitter competition between underwriters, with its usual attendant loss to them all, they will come together in a spirit of conciliation and agree one with the other to share a definite line of business, in order that the rates may be brought to such a level as to insure a profit on the business written. To this end, what is known as a pool is formed, in which each member agrees to reinsure with every other member of the agreement a predetermined proportion of all such business which he writes, definite rates of premium being arranged for the exchange of such reinsurance. This has a beneficial result, not only to the underwriting community, but also to the insuring public. While competition undoubtedly produces lower rates and has a salutary effect, competition, if carried to extreme lengths, results in impaired security, because the premium income is insufficient to pay for the losses incurred and capital and surplus are affected. If underwriting can be put on a sound basis, by which the public pays to the underwriting community a premium sufficient to meet all the necessary expenses of the business and leave a fair margin of profit on the capital invested, a distinct benefit has been gained both by the insuring public and by the underwriters. This is the result of reinsurance pools which are properly conceived and efficiently conducted.

Reinsurance Subject to Original Conditions.—It must be remembered that in dealing with the original assured the under-

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writer is dealing with a specific risk. When he in turn reinsures his lines, he is probably reinsuring not the risk of an individual assured, but it may be the risks of a large number of original assureds, each one of whose policies involves a different set of conditions and the reinsurance contract, especially an excess reinsurance contract covering on cargo generally, is indirectly interested in all these differences. It is, therefore, desirable where possible that the reinsurance shall follow precisely the terms and conditions of the original insurance. It is ordinarily much easier to arrange this in the case of participating reinsurance than in the case of excess reinsurance. In any event the difference in terms between the original insurance and the reinsurance should not extend beyond a difference in average conditions, much reinsurance being placed on F.P.A. terms regardless of the average conditions of the original insurance.

Reinsurance at Original Rates.—If reinsurance is placed on original terms and conditions, it simplifies matters greatly to place the reinsurance at the original rates less a discount sufficient to offset the brokerage and taxes and possibly other incidental expenses of the original underwriter. Participating reinsurance is usually so placed that the average conditions in the reinsurance policy follow precisely the original conditions. If, however, the average conditions differ, some allowance should be made in the rate to compensate the original underwriter for the perils which remain at his risk. Excess reinsurance may be placed at original rates, but more often such reinsurance is arranged on a definite schedule of rates.

Market Conditions.—Reinsurance which is specially placed by an underwriter as a rule has to take its chances in the open market and often underwriters incur a heavy loss in placing such risks. Again, an underwriter may find in the reinsurance market, other underwriters, who in an endeavor to obtain business, are willing to quote a rate which is less than that received on the original insurance. Whatever may be the state of the market, a prudent underwriter will obtain reinsurance, in order that he may retain only a conservative line.

Arbitrage.—Some underwriters, unfortunately, will take advantage of a full market and charge a competitor, who must have accommodation, an amount greatly in excess of the market

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rate, and greatly in excess of what experience has proved such a risk to be worth, knowing that he can under contract reinsurance or in some other reinsurance market, again reinsure the whole or a part of the risk at a much lower rate, thus making a profit. If the whole amount is reinsured by the second underwriter, the difference between the two rates will be clear profit, as he will incur no liability other than the guaranteeing of the reinsurance effected by him. The profit in this interchange of reinsurance is known as arbitrage.

Reinsurance of Unterminated Risks.—In some cases through mismanagement or through a series of unfortunate losses, the capital of a company will become impaired and not being able to raise additional funds to make good the impairment, it becomes necessary for the company to retire from business. There will, of course, be outstanding at such time a number of unterminated risks, and in order that the settlement of the affairs of the liquidating company may not be delayed and in order that the policy holders whose risks are still unterminated may be protected, the liquidating company will if possible and if it has funds with which to pay the premium, reinsure its outstanding liability with other underwriters.

Reinsurance of Overdue Vessels and Vessels in Disaster.—It also happens quite frequently in the case of vessels out of time, that is vessels which are overdue at their ports of destination, or in the case of missing vessels, or in the case of vessels which have met with disaster and whose fate is in doubt, that underwriters will realize that they are carrying lines greater than they would care to lose, and accordingly go into the reinsurance market to reinsure all or a part of their line. The original underwriter is bound in all cases and especially in cases of this nature to make a full disclosure of the existing facts, the law respecting representation, misrepresentation and concealment applying equally to direct insurance and reinsurance. It therefore is only natural that market rates in the case of overdue and missing vessels and vessels in disaster will rapidly soar, rates of ninety-five percent being sometimes charged where the condition of the vessel is known or presumed to be extremely perilous.

Reinsurance Bordereau. Concurrent Reinsurance.—Reinsurance when placed on the participating or share basis, is usually

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declared by the original underwriter to his reinsurers in detail. Each individual risk is set forth on large sheets, a full description of the voyage, the vessel, sailing date, kind of goods, average conditions, amount of insurance and original premium charge, being noted. These sheets are known as bordereaux, and if the reinsurance is placed in several shares, the sheets are manifolded, each reinsuring underwriter receiving his copy. The share of each risk reinsured may be separately extended and the reinsurance premium noted against it, or all the entries on a sheet may be totalled, the percentage of allowance on the premium subtracted, and the net amount of premium divided into shares as called for by the reinsurance contracts. Where more than one underwriter is interested in reinsurance, each taking a share on equal terms and conditions, such reinsurance is known as concurrent reinsurance.

Foreign and Domestic Reinsurance.—Prior to the outbreak of the world war a large portion of the reinsurance done in the American market found its way into the English and Continental markets. However, with the rapid growth of marine insurance in this country, it is now possible to place large lines of reinsurance in the American market, little difficulty being experienced in covering lines up to $1,000,000. Of course, the reinsuring underwriters do not necessarily retain the lines which they reinsure, but under reinsurance contracts, or treaties as they are sometimes called, these risks may be spread out in all directions, so that if the placing of a large line, say $3,000,000 or $4,000,000, could be traced in detail, it would be found that portions of the risk were lodged in every available market of the world.

Original Assured Has no Claim on Reinsurance.—The insuring public should realize, when placing insurance with companies of moderate size who write large lines, that the company whose policy they hold probably is retaining but a very small percentage of the liability assumed. While in the event of a total loss the assured looks to the original company for the payment of the loss, he bearing no relation nor having any claim against the reinsuring company, yet the security of its insurance rests indirectly on the stability of the reinsuring underwriters. It is, therefore, pertinent for an assured to make inquiry as to the security of the reinsuring underwriters.

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CHAPTER 18

LOSSES. INTRODUCTION. GENERAL AVERAGE

Losses Beneficial to Marine Insurance.—Thus far the consideration of marine insurance has been from the constructive side, which is primarily engaged in the accumulation and preservation of funds to provide indemnity for inevitable losses. While it is true that an undue proportion of losses will result in the destruction of marine insurance companies, it is equally true that losses make the business possible. Underwriters do not invite losses, nevertheless they are welcomed in moderation as furnishing the very best reason for the origin and continuance of the business of insuring. When losses are reduced to a minimum, question then arises whether it is not cheaper for an assured to carry his risk than to insure it. Fortunately for the insurance business, the assured who reasons thus, and who attempts to put his theory into practice, seldom succeeds and generally gains an entirely new point of view in regard to the hazards of marine transportation. Experience usually teaches merchants and shipowners a salutary lesson on the folly of endeavoring to insure without having a wide and varied distribution of risk. However, until nature operating on the high seas, changes its laws, losses will happen and the necessity for marine insurance will continue.

The Conduct of Loss Matters Important.—The success or failure of an insurance company, while dependent in considerable measure on the judgment shown in underwriting, is in no less degree dependent on the conduct of its loss affairs. Undue liberality in the settlement of losses may result in impairment of capital, while unfair or parsimonious methods in the adjustment of claims will surely be felt in injured reputation which is only less fatal than impaired capital. A happy medium must be found where the assured will receive, as nearly as may be, full reimbursement for loss suffered, notwithstanding the fact that there may be, through no fault of his, some technical objection to the claim presented. An assured in paying premium expects

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to purchase, not a lawsuit, but indemnity against a possible loss. He does not pretend to be an expert in the principles of insurance, but relies on his underwriter or his broker to furnish the measure and kind of protection which his necessities require. Unfortunately the assured in many cases is quite ignorant of the principles of insurance, and objects to paying the price which would purchase the type of protection which would best serve his needs, and in the event of loss considers that the underwriter is unduly technical or even unjust when he refuses, for instance, to pay a particular average claim under a policy issued on free of average terms and at a free of average rate.

Insurance Funds Must be Conserved.—Loss adjusters must be technical. It is only by the closest scrutinizing of claims, and by the most careful adjustments that marine insurance can be kept on a paying basis. The results are so uncertain, the possibility of a series of heavy losses is always imminent, while the keen competition which ordinarily exists in the marine insurance market makes the business a precarious one, at best requiring the greatest skill in underwriting and the most careful conserving of funds in the payment of losses and in the cost of operation in order that the balance may continue on the credit side of the books. Statistics aid materially in marine underwriting, but regardless of theories evolved from computations, unexpected losses will happen and must be paid. The assured, in buying insurance, receives some definite kind of protection and that alone, just as surely as when he buys a ton of coal he gets only coal and not in addition a quantity of kindling wood to ignite the coal. The business of loss adjusting is primarily engaged in measuring what the assured has bought and delivering his purchase to him in the form of indemnity for loss, a task that at times requires the wisdom of a Solomon, in view of the clauses which underwriters and brokers devise.

Loss Adjusting a Profession.—The profession of loss adjusting, while conducted in connection with and as a necessary part of marine underwriting, is a science in itself and requires a different kind of training from that which develops a successful underwriter. It is true that underwriters as a rule understand the theory of loss adjusting and in fact can, and do, if necessary adjust losses, but a too close adhesion to the caution and care

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needed in the adjustment of losses, is apt to result in timidity in underwriting. Constant devotion to the adjustment of losses is apt to produce a state of mind where every risk written represents a possible loss rather than a possible safe arrival, an attitude of mind in an underwriter that can lead only to over-conservatism in the selection of risks. Better underwriters are produced when the underwriter has a thorough knowledge of underwriting and a theoretic knowledge of loss adjusting. The converse is equally true that a better loss adjuster results from a mind expert in the technique of loss adjusting with a theoretic knowledge of underwriting.

Specialization in Loss Adjusting.—The field of average or loss adjusting is so broad that specialization has resulted. We find some adjusters who devote their time to losses on special interests, that is, to particular average and total loss cases. Others will confine their work exclusively to general average adjusting which is a science in itself and one requiring the highest degree of skill. General average, as has already been indicated, is a much older method of maritime protection than is marine insurance. Its principles are founded on maritime law, and not on the law of marine insurance. General average adjustments are never made in the offices of marine insurance companies. They, however, retain on their staffs men skilled in the criticism of general average adjustments, who examine the statements as prepared by the adjusters to see whether or not the interests of all concerned in the case have been safeguarded.

General Average.—It is felt by many that had marine insurance, as at present practised, been devised twenty-five hundred years ago the need for general average would never have arisen. Marine insurance furnishes all the protection needed in the conduct of maritime ventures, and if a condition of affairs could be conceived where general average was proposed as a new theory to aid in the conduct of marine insurance, it would probably be dismissed as out of harmony with modern business methods. Antedating marine insurance, however, the practice of general average has become deeply rooted in the commercial law of all maritime nations. The old Rhodian Law promulgated in the tenth century B. C. provided for general average contributions in the case of jettisons. Whether this theory of distributing losses

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originated with the Rhodians or was acquired by them from earlier masters of the sea, is of little moment, the fact remains that the idea of which the earliest record is found in the Rhodian Laws, was incorporated in the Roman Civil Law. During the Dark Ages no trace is found of the theory, but with the revival of European commerce in the Middle Ages, general average again appears as a part of the sea codes, existing side by side with marine insurance, but separate from it. Marine insurance was interested only indirectly in general average and general average was not directly concerned with marine insurance. These two forms of maritime protection existed, each fulfilling its separate mission. Merchants who suffered loss in general average sacrifices did not seek reimbursement under their insurance policies until they had received contribution from the other interests involved, when they made claim upon their underwriters for the proportion of the loss not made good in general average. In fact, it is only within the last half century that the assured has made claim directly on the underwriter for losses suffered in general average sacrifices. The underwriter now reimburses the assured for losses suffered, awaiting the stating of the average in order to receive recoupment from the contributions made for the benefit of the lost or damaged property.

No Reasonable Substitute for General Average Yet Found.—The abandonment of the practice of general average has been advocated in recent years, the great object in modern business life being to use short cuts and to do away with unnecessary detail. While it doubtless would be desirable to eliminate the inevitable detail and expense connected with the stating of general average, no practical plan has been formulated to accomplish this end. On the other hand, the fact cannot be ignored that the existence of the law of general average has a salutary effect in preventing the unnecessary destruction of property through jettison or otherwise in efforts to save vessels in positions of perils. If the ship had not been legally bound to contribute for jettisoned cargo, there is little doubt that much more cargo would have been destroyed in the past. No solution of the general average problem will be satisfactory which merely eliminates the detail of the present system without preserving its beneficial features. It may be that a closer union between the nations in the future

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may make possible international enactment on the subject. In the meantime, general average is engrafted on marine insurance and is of such great importance, that no consideration of marine insurance can be complete without at least some outline of the underlying principles of this branch of maritime law and practice being given.

Definition of General Average.—A general average loss is one which is the result of a sacrifice voluntarily made, under fortuitous circumstances, of a portion of either ship or cargo or the voluntary incurrence of expense for the sole purpose of preserving the common interest from an impending danger. When a vessel becomes involved in a peril, and in order to save the common venture from that peril or to extricate it from its ultimate results, sacrifices are made or expenses are incurred by the master, acting for the benefit of all concerned, these sacrifices and expenses must be borne by all the interests involved, whether ship, freight or cargo, in the proportion which the amount preserved to each interest bears to the total value saved. The task of determining the sum which each interest shall pay, or, in the event of an interest having been called upon to make a sacrifice, the amount which it shall receive, is accomplished by the general average adjusters to whom reference has been made. The amount of detail involved in these cases depends in large measure on the number of interests involved. The preparation of a general average adjustment in the case of a vessel carrying bulk cargo which is owned by one interest is a simple matter. In the case of a large steamer, however, loaded with a miscellaneous cargo owned by hundreds of different shippers or consignees, the stating of the general average is a task involving tremendous detail. The final average adjustment as published and distributed to underwriters and shippers for their examination in such cases sometimes occupies two or three volumes of five hundred pages each.

The General Average Adjuster.—The average adjuster takes complete charge of the case. He is usually appointed by the owner of the vessel since this is as a rule the largest single interest involved. When the vessel is released from the peril and arrives at the port of destination, the master is required to keep the interests together until security is given for the payment of such

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charges as may be assessed against each interest involved in the venture. Accordingly a form of general average bond (see appendix, p. 424) is prepared which recites the circumstances under which the general average sacrifices were made and the expenses incurred, and wherein the signatories of the bond agree with the owners of the vessel and with one another to provide all necessary information and also obligate themselves to pay the losses and expenses therein mentioned which may be shown to be a charge on the cargo of the vessel when the adjustment is completed. In addition to this bond, the adjusters may also demand security for the payment of the charges before they will release the goods. This security is given in one of two ways. If the goods are not insured, the owner is required to make a cash deposit sufficient to cover the estimated charges which may finally be assessed against his particular interest. If the property is insured with an insurance company, the adjusters are usually willing to accept the guaranty of the underwriters for such charges (see appendix, p. 426).

Laws of General Average Not Uniform.—There are no limits set with respect to the circumstances out of which a valid general average may arise. The laws of the various maritime countries differ from each other, and in our own country there is no uniformity between the customs of the various states respecting general average. Efforts have been made to reconcile the differences and to produce an international code of general average—the York-Antwerp rules, to which reference will be made, being the nearest approach to such a code. Associations of average adjusters organized in this and other countries have adopted rules for the adjustment of general average cases, but none of these efforts changes the law of general average as developed in the various countries. This code and these rules when agreed to by the interested parties merely furnish a basis for adjustment, but in so far as these rules do not cover the particular point involved, the law of the land where the adjustment is to be made or the customs of the port will prevail.

Elements Necessary to Valid General Average.—The elements necessary to make a valid claim for general average differ in the various countries, but the underlying principle is the same in all. In the United States it is established that the following circum-

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stances must appear in a case in order that the right to claim general average contribution may arise:

1. The existence or the rapid approach of a peril common to all the interests, hull, freight and cargo.
2. A voluntary sacrifice reasonably made or an extraordinary expense justifiably incurred to avert the peril or to save the common interests from the effects of the peril.
3. The preservation of a part of the venture.
4. Freedom from fault on the part of those interested in the venture claiming contribution.

The Peril and the Sacrifice.—While the number of perils which give rise to general average contribution has increased greatly since the original Rhodian theory of requiring contribution for jettison, the underlying principle governing the right to demand contribution has not changed. A peril must exist which it is to the advantage of each and every interest in the venture to avoid, that is, the peril must be of such a nature that there is impending danger of physical injury to the common interest. If a peril of this kind exists then voluntary sacrifices which are reasonably made in order to avert it, or to free the venture from the probable effects of such danger, must be paid for by a ratable contribution made by all concerned in the venture. These sacrifices may consist of the actual destruction or loss of part of the vessel or its cargo as in the case of cutting away masts or spars or the jettison of goods to relieve the ship. Or they may be consequential damage resulting from efforts to save the venture as when the engines of a steamer or the sails of a ship are subjected to uses of a different nature from those for which they were designed. Thus, if a steamer is stranded and in an effort to float the vessel and thus save the entire venture, the engines are worked in an unusual manner and injured, it seems reasonable that such injury so incurred to the machinery should be made good by all the interests. In the case of a vessel on fire, water or steam may be forced into the hold in an endeavor to extinguish the flame, doing damage to cargo which was not touched by the fire. The damage to such cargo having been incurred voluntarily, in an effort to benefit all concerned, should also be made good.

The Preservation of Part of the Venture.—It may happen that after these voluntary sacrifices have been made the entire ven-

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ture will become a total loss. In such a case the sacrifices made have accomplished no useful purpose and the cargo destroyed has merely met an earlier fate than that which was temporarily benefited by the sacrifices. It is, therefore, a rule of general average practice that there must result from the sacrifices made the saving of a part at least of the venture. At times expenses are incurred by the master for the general benefit, which, if reasonably and justifiably incurred must be contributed for. It may happen, however, that after such expenses have been incurred or disbursements made for the general benefit, that the venture will be completely lost. The purpose of general average contributions is to work exact justice among the various interests exposed to the common peril, and it does not seem just that the subsequent loss of the venture should shift the burden of responding for general average expenses incurred or disbursements made prior to such loss on to the master or the owner of the vessel. The master, during such a time of stress is not alone the agent of the owner of the vessel, but is also the agent of each and every interest involved in the venture, and if acting within the bounds of such agency in incurring the expenses or in making the disbursements, each interest is bound for its ratable proportion of such expenses and disbursements based on the values existing at the time the expenses were incurred or the disbursements made. It is possible in many cases for the master or agents to insure the amount of their expenses and disbursements against the risk of a subsequent loss of the vessel, but such insurance does not seem to be obligatory on the part of the master nor is the procurement of such insurance always possible. If the money disbursed is raised by the hypothecation of the ship or cargo under a bottomry or respondentia bond, then the subsequent loss of the vessel will relieve the interests involved from the duty of contributing, because the lender, in consideration of the high rate of interest received on his loan, assumes the risk of non-payment through loss of the venture. In these days of rapid communication by telegraph the raising of money by bottomry is discouraged.

What is a Voluntary Sacrifice?—While it is essential that the sacrifice made be a voluntary one, great latitude is given to the meaning of voluntary. It may be that under circumstances of

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peril but a single course is open to the master, which he follows intuitively. If, however, in pursuing this natural course the vessel and cargo are subjected to hazards of an unusual nature and not in the ordinary contemplation of the parties the sacrifice will nevertheless be considered as voluntary. Whether the loss was reasonably incurred is also considered in the light of the circumstances existing at the time. Allowance is made for the fact that decisions must be quickly reached when a peril is impending. An action taken in the face of a rapidly approaching peril might involve unnecessary sacrifice when considered in the light of subsequent events, nevertheless if such action was justifiable under the circumstances, allowance will be made for the sacrifice incurred. However, contribution will not be allowed for sacrifices made if the claimant is in any way willfully responsible for such sacrifices. General average was instituted and has been continued by the maritime law for the purpose of working equity among persons whose interests have been exposed to a common peril, some of which have been sacrificed for the saving of the rest, and equity cannot be administered where the claimants do not come into the adjustment of the loss with clean hands.

The General Average Adjustment.—General average adjustments are made as a rule according to the law, customs and usages of the port of destination unless otherwise agreed in the contract of affreightment as in the case of bills of lading calling for adjustment in accordance with York-Antwerp Rules. If the voyage is broken up at a port of refuge it is customary to make the adjustment in accordance with the law and customs of that port unless otherwise agreed in the contract of affreightment. Where there is cargo destined for various ports and there is no agreement to the contrary, adjustment may be demanded with respect to the cargo destined for each port in accordance with the law and usages of that port. The adjustment is not made up until the arrival of the vessel or cargo at destination.

Contributory Value of Hull.—The average adjuster having obtained the signatures of the interested parties to the general average bond and having obtained either underwriters' guarantees or cash deposits as security for the bond, proceeds with the compilation of the facts necessary to fix a proper apportionment of the sacrifices made, of the expenses incurred and of monies dis-

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bursed. Contribution being made on the net saved value plus the amount made good to the interest because of sacrifice made, it becomes necessary for the adjusters to fix a valuation of every interest concerned in the venture. The vessel is valued at the port at which the voyage terminates in her existing condition less the cost of any repairs made subsequent to the general average act and prior to arrival, which value represents the amount saved to the owner by the general average act. It is always a difficult matter to determine the real value of a vessel, and the fact that a ship when being valued for general average purposes is usually in a damaged condition, adds not a little to the difficulty of arriving at a fair valuation. Since the amount of payment to be made depends on the contributory value, the vessel owner will, as a rule, seek to have a low valuation made, whereas the cargo owners will naturally seek a high value for the vessel so that their contributions may be correspondingly reduced. As the valuation of a vessel may be considered from several angles, such as the cost of replacement, her freight-earning capacity or her location with respect to possible freight engagements, the situation presented is one of no little difficulty. It is customary for the adjusters to obtain the certificate of an expert as to the value of the vessel.

Freight Contribution.—Freight contributes on the basis of bill of lading freight. If such freight is at the risk of the vessel owner, a deduction varying from one-third to one-half is made in the United States to offset the actual expense of earning the freight after the general average act. This deduction is an arbitrary one made regardless of the point on the voyage where the act occurred. Just as the vessel contributes on the net amount saved by the general average act, so the freight should contribute on the net amount of freight saved. It is on this basis that freight contributes under the York-Antwerp rules and a similar basis of value for freight is used under the rules of practice of the Association of Average Adjusters of the United States. If the freight is prepaid or guaranteed then as already explained it is in reality part of the value of the cargo and is included in such value for purposes of contribution. The same difficult questions arise in regard to freight, in a general average adjustment, as do in the insuring of the interest itself, and the same rule applies,

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namely, that he, at whose risk the freight is, is liable for contribution in general average.

Contributory Value of Cargo.—Cargo is valued for purposes of general average contribution at its gross wholesale value at the port of destination in its then condition, less charges which accrue upon arrival, such as freight, duty, cartage, and other necessary expenses entering into the wholesale market value at destination. This does not, of course, include the cost of insurance, or any other charges which have already entered into the cost of the goods. To the net value thus determined is added any amount made good in general average and there is deducted any special charges, arising out of the casualty, that are a lien on the particular item of cargo under valuation.

General Average Cases are Often Complicated.—The adjusters receive tenders for the repair of any damage which may have been received by the vessel and an apportionment is made of those damages which are the result of general average sacrifices and those which are the result of ordinary marine perils. It must be observed that many times in general average adjustments there is a combination of general average losses and disbursements, particular average losses and special charges which are incurred solely for the benefit of particular interests. This may be illustrated by the case of a vessel which is discovered on fire at sea. In order to extinguish the fire and save all the interests concerned, the hatches will be battened down, the ventilators closed and either steam or water turned into the hold in an endeavor to extinguish the fire. If the efforts are successful, it will doubtless be found that only part of the cargo in that particular hold has been on fire, and that packages not reached by the fire, have nevertheless been badly damaged by the effect of the steam or the water used in the effort to extinguish the fire. In this particular case, the only items for which general average contribution would be made are for those portions of the vessel and cargo which have suffered by the water or the steam or through the efforts made to introduce the water or the steam and for extraordinary expenditures incurred in the general interest. The consequential loss or expenditures due to sacrifice for the general benefit, must be made good in proportion to the values saved. The actual damage to the ship or cargo by the fire itself or any

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expense due solely in consequence thereof is not a general average, but a particular average loss or a special charge, for which the affected interests alone are responsible.

Statement of Both General and Particular Average.—The foregoing illustration will give some idea of the many and perplexing problems with which average adjusters are confronted. The average statement does not necessarily confine itself to the general average loss alone, but may also state the particular average losses, when this is necessary in order that the general average loss may be accurately determined. Furthermore, in the case of a severe fire, many cargo interests may become unidentifiable, some of which are fire damaged and some merely water damaged. It will be apparent that in a general cargo steamer where hundreds of interests are involved, the adjustment with respect to the unidentifiable cargo is a matter requiring considerable care and skill. Then too in the case of the vessel itself in the event of stranding, not voluntary, where the engines have been worked in an effort to extricate the vessel, and where the vessel has been subjected to many unusual stresses, adjusters are confronted with a very difficult problem in determining what damage is the result of the stranding itself and at the risk of the vessel and what injuries should be contributed for as sacrifices made in the general interest. It sometimes happens that during a single voyage two entirely separate general average acts will be made. Because of jettisons or possible delivery of cargo at intermediate ports reached during the interim between the two sacrifices, the interests involved in each case are not the same, leading to complications which require the use of all the analytical powers for which general average adjusters are noted.

York-Antwerp Rules.—In an effort to reconcile the differences in general average practice in the various commercial nations The Association for the Reform and Codification of the Law of Nations held a meeting at York, England, in 1864 and another meeting at Antwerp in 1877, when a code of rules for the stating of general average was adopted known as the "York-Antwerp Rules." Later on in 1890, the Association again met at Liverpool, where the code was revised and the "York-Antwerp Rules, 1890" were promulgated (see appendix, p. 419). This code does not pretend to cover the entire field of general average, but

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merely sets down certain definite rules with respect to the adjustment of general average losses arising out of certain specified circumstances.

Provisions for York-Antwerp Adjustments.—It is customary in bills of lading to provide that adjustment of general average shall be made in accordance with the "York-Antwerp Rules, 1890," and it is also usual to have provision made in insurance policies that general average may be so adjusted. In so far, however, as the "York-Antwerp Rules" do not apply to the particular facts involved, the law applying at the port of destination or at the port where by mutual consent the adjustment is made, is the law which should determine the mode of adjustment.

Jettison and Fire.—A brief summary of the "York-Antwerp Rules, 1890" will throw some light on the sacrifices which are in the nature of general average and are so adjusted. The first rule in this code provides that "no jettison of deck cargo shall be made good in general average." When this rule came to be applied, it was quickly perceived that in the case of certain trades, such as the lumber trade, where it is customary and prudent to carry a considerable portion of the cargo on deck, that the enforcement of this rule worked a hardship on the cargo owners. Accordingly the practice has arisen in connection with trades where by custom cargo is laden on deck, to make provision in the contract of affreightment for the amendment of the York-Antwerp Rule No. 1 so that the word "no" is omitted and contribution is thus allowed for the jettison of such deck cargo. If in the ordinary case cargo is jettisoned for the general safety, all consequential losses arising from such jettison, to the vessel itself or to the other cargo through admission of water to the holds on account of the uncovering of the hatches to extract the cargo or from any other cause directly resulting from the sacrificial act, are admitted in general average. So in the case of extinguishing fire on shipboard, where damage results from measures taken to extinguish the fire, or through the beaching or scuttling of a burning ship, allowance is made for such consequential damage. No allowance is made, however, for damage directly caused by the fire itself.

Cutting Away Wreck. Stranding.—Where a vessel has been partially wrecked by a sea peril and portions of the spars remain,

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the cutting away of these remnants is not allowed for in general average under the York-Antwerp Rules. Under the law of the United States, however, allowance would be made for such parts cut away, if there would have been a reasonable chance, but for the continuance of the storm, of saving the parts and if saved, they would have been of some value. Rule No. 5, of the York-Antwerp Code provides that if a vessel is voluntarily stranded under circumstances where if such course were not adopted it would inevitably sink, or drive on shore or on the rocks, no allowance shall be made for loss or damage to ship, cargo or freight, but that in all other cases of voluntary stranding for the common safety the consequential loss or damage shall be allowed as general average. The restriction in this rule with respect to voluntary stranding when a vessel is in inevitable danger of being sunk or driven on the shore or on rocks is not in agreement with the law in the United States where it is sufficient to establish a case for contribution in general average, to show that the vessel was selected to make a voluntary sacrifice for the purpose of saving the remainder of the associated interests. The fact that the vessel would apparently in any event have been lost does not destroy the right of the vessel to recover contribution from the cargo if it be saved because of the sacrifice of the vessel. The possibility always remains that through some unexpected circumstance, the vessel if not voluntarily stranded might have been saved.

Injury to Engines or Sails.—The York-Antwerp Rules provide that allowance is to be made for damage caused to the sails of a vessel or to the engines of a steamer or vessel propelled by mechanical power, when such damage is the result of efforts made to float a stranded ship. To aid in floating a vessel which is ashore, it is usual to discharge into lighters, her fuel, cargo and stores in order to lighten her. The cost of such extra handling, lighter hire and reshipment of goods is admitted as general average. If a steamer when leaving her port of departure is adequately equipped with fuel for the prosecution of the proposed voyage, but because of perils encountered or other fortuitous conditions, so much is burned that she runs short of fuel and in order to bring the entire venture safely to destination the ship's stores or parts of the vessel or cargo are burned to produce power, or the

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vessel is necessitated to make a port of refuge to obtain a supply of fuel, such extraordinary sacrifices and expenses are treated as general average. Unusual expenses incurred at a port of refuge for the common interest are general average expenses and the wages and maintenance of the crew in such port of refuge are also contributed for. When damage is suffered by cargo in the act of discharging, storing, reloading and stowing because of a general average act, such damage is contributed for, only when the cost of these measures respectively is admitted as general average.

Thirds Off. Separation of General and Particular Average.—When repairing damages which were caused to vessels through general average sacrifices, it was formerly the custom to deduct one-third from the cost of such repairs, on the principle that new material was being supplied for old. The injustice of this in the case of new vessels and in the case of metal vessels was so apparent that Rule No. 13 of the York-Antwerp Code provides a definite scale for such deductions. It is necessary for average adjusters to exercise the greatest care to allow in general average only such repairs to vessels as are the result of the general average act, charging against the owner such repairs as are made necessary by injury suffered through marine perils. When temporary repairs are made to a vessel no deduction of thirds is made as the temporary repairs are of no permanent benefit to the owner of the vessel.

Freight.—If the freight is not prepaid and therefore is not a part of the value of the goods, it also is an interest involved in the general average sacrifice. The amount which is made good to freight and the amount of and the value at which the freight is made a contributing interest are outlined in the York-Antwerp Rules. It must be remembered, however, that if the bill of lading does not provide for an adjustment in accordance with York-Antwerp Rules, the statement is drawn up in accordance with the law prevailing at the port of destination, unless there is some other custom in vogue. Thus, in the case of general average sacrifices in connection with vessels from the United States bound for ports in the West India Islands, it is usual to have the adjustment made in the United States, in accordance with the law of the port of departure.

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Border-line Cases.—It will be found that the laws of the various nations differ materially in certain respects from each other and from the rules promulgated under "York-Antwerp Rules 1890." Enough, however, has been mentioned in the foregoing outline to indicate the many and difficult problems with which an average adjuster has to deal. Many cases will be on the border line, where it will be a matter of opinion whether or not the sacrifices made and the expenses incurred are in the nature of general average. The determination of these questions to the satisfaction of all parties interested is one requiring the use of great skill and tact. Each underwriter who is interested in the venture and upon whom the liability for the general average contribution falls, carefully scrutinizes the general average adjustment when issued, to determine whether or not in his opinion, the assessments and allowances made are just and in accordance with law or the rules of practice, in view of the statement of the facts in the case as set forth at the beginning of the general average statement. Sometimes years are taken in the final settlement of a case, during which time the expenses of the average adjusters are steadily growing. Finally, however, the adjustment is completed and the settlements are made, and in so far as it is humanly possible, exact justice is done to all the interests involved.

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CHAPTER 19

PARTICULAR AVERAGE

Most Claims are for Partial Loss.—The second class into which losses may be grouped is particular average. This class includes in number and, perhaps in actual financial loss suffered, the largest portion of marine losses. It is the cumulative effect of the vast number of particular average claims presented to an underwriter that determines success or failure for his operations. General average claims while important and troublesome are as a rule not sufficient in volume to have a material effect on the outcome of underwriting operations, the net loss after adjustment as a rule being a comparatively small percentage of the value at risk. Likewise, total losses, involving as they do in many cases the loss of large values are fortunately few when the total number of losses incurred in a given period is considered. This fact is perhaps best shown by the low rates charged for marine risks when compared with the relatively high rates charged for war risks, since losses arising out of the latter class of perils usually result in total or constructive total losses. It may therefore be said with considerable assurance that the field of particular average is where the real struggle of marine insurance takes place.

Particular Average Refers to a Special Interest.—Phillips (Section 1422) defines particular average as "a loss borne wholly by the party upon whose property it takes place, and is so called in distinction from a general average for which diverse parties contribute." A particular average should be distinguished from the total loss of a part which may occur when a shipment consists of various units as, for instance, when out of a shipment of 50 bars of copper one is lost during transhipment, or out of a lot of 50 bales of cotton one is totally destroyed by fire. This is not in the true sense a particular average loss but is a total loss of an integral part of the entire shipment. Particular average has reference primarily to damage or loss which is suffered by a particular in-

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terest or by part of it, which destroys less than the total value of the particular interest, or the part of the particular interest involved. It should, however, be observed in this connection that a particular average may attain such a percentage of the total value involved, that the assured may, by exercising the right of abandonment, convert such particular average into a constructive total loss. The consideration of this phase of the subject will be deferred to the following chapter. The adjustment of the total loss of part of a shipment is comparatively a simple matter. If the amount of insurance on that particular part is ascertained, then the underwriter's liability is fixed and determined and he pays this sum plus whatever charges may accrue in the adjusting of the loss.

Particular Charges.—Particular average must be distinguished from the particular charges which are incurred under the sanction and requirement of the Sue and Labor clause, which appears in marine policies. These charges may be incurred in cases where there is no resultant damage to the property involved, the expenditures made having resulted in the prevention of damage to the property. On the other hand, after the incurring of such charges the vessel or cargo may become a total loss. Nevertheless the underwriter remains liable for these charges, in such cases paying more than a total loss under his policy. Whether or not the property be damaged these charges are not particular average, but are special charges recoverable irrespective of the question of franchise under the "Sue and Labor" clause and not under the "Perils" clause. It must appear in support of such claim that the expenses incurred arose out of an endeavor to preserve the particular interest from a peril insured against under the policy.

Comparison of Gross Sound and Damaged Values.—The adjustment of a particular average caused by damage, however, is more difficult and is determined by ascertaining what the percentage of depreciation is on the goods. This is done by comparing their gross sound value with their gross damaged value as fixed in the open market. When this precentage is found, it is applied to the insured amount under the policy and settlement of loss is made accordingly. There is added to this sum whatever expenses may have been incurred in connection with

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the settlement of the loss. It will be pertinent at this point to direct attention again to the fact that in marine insurance unlike ordinary fire insurance, the underwriter is merely a co-insurer of the property with the assured if the latter has not insured his property in full, and a particular average no matter how small will be adjusted by applying the percentage of depreciation to the amount insured on the damaged property. If the amount insured is less than the real value of the goods the assured will assume the loss on the difference himself. If, on the other hand, the goods are insured for more than their real value the assured will recover more than the loss suffered. Here again marine insurance differs from fire insurance in that under a fire policy recovery under the standard form of policy is limited to the actual loss suffered. A merchant importing goods will often discover, when an adjustment of particular average is made, that through neglect to insure collectible freight and duty he has become a co-insurer with his underwriter for a considerable amount. It should be noted that the marine underwriter assumes in full the expenses incident to the adjustment of the loss.

Comparison of Gross Values Justified.—In determining the percentage of loss suffered, the values taken for comparison are the gross values at destination; that is, the market values of the sound and damaged portions are compared. These values include the freight, duty and charges which have been incurred in order to place the particular goods in that particular market. If the comparison were made on net values, that is, the invoice value of the goods less the freight and other charges accruing, the adjustment would work an injustice. As an illustration, a shipment of cotton print goods imported from Liverpool to New York may be taken. In sound condition, these goods would have a market value of say $5,000, but in the damaged condition in which they arrive are worth only $2,500 in the New York market, showing a depreciation of 50 percent. Let it be assumed that in the sound value of $5,000, there is an amount of $1,000 which represents the charges incurred in order to place the goods in the New York market such as freight, duty and insurance. This $1,000 will accrue whether the goods arrive in a sound or a damaged condition. If the net values were compared the sound value would be $4,000 ($5,000 less $1,000) while the damaged value

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net would only be $1500 ($2500 less $1000 the cost of placing the goods in the market) thus showing a depreciation of 62½ percent, which would be applied to the insured value in the policy. Let it be assumed that the goods are insured for 10 percent over their value or $5500 and the adjustments under the gross and net basis would appear as follows:

	Gross basis	Net basis
10 cases cotton print goods c.i.f. invoice value..... $5000 Plus 10 percent..... 500		
Insured value.....	$5500	$5500
Insured subject to 5 percent particular average. Therefore amount necessary for claim..... $275		
Market value at New York:.....	$5000	$4000
Market value in damaged condition.	2500	1500
Depreciation.....	$2500 or 50%	$2500 or 62½%
Insured value $5500.....	@50% = $2750	@62½% = $3437.50
Add adjusting charges incurred, such as auctioneer's commission, appraiser's fee, advertising, etc. ...	25	25.00
Total amount of particular average loss.....	$2775	$3462.50

Comparison of Net Values Unfair.—It will appear from the foregoing illustration that an adjustment based on any comparison other than that of gross market values is unfair, in that the assured gains an undue advantage by a comparison which shows a percentage of depreciation greater than that actually suffered. The values at the place of destination of both the sound and damaged goods are the market values which naturally include the reasonable expenses necessary to deliver the goods at such place, but are, of course, affected by the law of supply and demand.

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Freight and Duty.—In applying the percentage of depreciation determined by the foregoing comparison, the question arises as to what is the insured value against which the determined percentage of depreciation is to be applied. If there are charges of freight and duty accruing at the port or place of destination these charges will not be included in the insured value unless there is special provision in the policy providing for the insurance of such amounts. As the determination of the percentage of depreciation is made by a comparison of values after such charges have been paid, it will be manifest that a careless assured may unwittingly become his own insurer for a considerable portion of the landed value of the goods. It is customary, as already indicated in a previous chapter, to insure the items of collectible freight and duty. In making the adjustment of particular average in such cases there is added to the amount insured on goods, the amount of these two items, and the percentage of depreciation is applied to this gross amount, so that the insured may receive full indemnity for the loss incurred.

Policy Value Controls.—It must be borne in mind, however, that both the underwriter and the assured are bound by the valuation expressed in the policy, whether this value be high or low when compared with the true market value. The only time when such a valuation can be called into question is in the event of an exceedingly high value where evidence appears indicating that the valuation was made with fraudulent intent.

Determining Depreciation by Appraisal.—In the adjustment of particular average losses on goods where the amounts and quantities involved are not large, it is customary to arrive at the percentage of loss by appraisal rather than by sale in the open market. If the assured and the underwriter's representative can come to an agreement regarding the percentage of loss, that percentage is applied to the insured value and the adjustment so made. If, however, the assured and the underwriter's representative cannot agree, then it is customary to send the goods to public auction and have them sold there. The expenses attending such sales are a charge against the underwriter, as in the illustration cited above showing these charges added to the loss in the adjustment.

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Salvage Losses.—If no question is raised as to the insured value, so that the question of co-insurance on the part of the assured does not enter into consideration, an underwriter, when goods are sent to auction, may pay for them as for a total loss, and take an assignment of the damaged goods receiving the proceeds of the auction sale as salvage against this total loss. In other cases the assured receives the proceeds of the auction, and the underwriter pays the difference, between the amount so received less the expenses incurred in the sale, and the insured amount. So when goods are sold at a port short of destination, adjustment is made either by the payment of a total loss, the underwriter taking the proceeds, or by the payment of the difference between the insured value and the proceeds. In all such cases the percentage of depreciation is not considered, and the loss is known as a salvage loss.

Certificate of Damage.—Where goods arrive at a foreign port in a damaged condition, it is customary to call in the underwriter's representative, if there be one at the port of destination, in order that he may make an appraisal of the damaged property. If the underwriter has no representative, a Lloyd's surveyor or other competent appraiser will be appointed to make a survey and appraisal of the property. Where no experienced appraiser is available, two reputable merchants of the town, familiar with the class of goods under consideration, are often called upon to give their opinion of the percentage of damage sustained by the goods. A certificate setting forth the cause of the damage and the amount thereof is then issued by the appraisers, which certificate is attached to the other papers in the case and forwarded to the nearest point where the certificate or policy of insurance provides for payment of loss. Of course, if the appraiser called in cannot make an amicable adjustment of the loss, it is always possible to have the damaged goods sold in the open market, and the loss suffered thus determined. As has already been suggested, however, this method of determining the extent of loss is in many places disastrous to the underwriter in that through collusion there is little competitive bidding at these sales.

Special Adjustments.—Where there are different articles insured under a policy and the separate values of these different

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articles are ascertainable, it is customary and proper to adjust particular average losses on each kind of goods separately, determining the percentage of damage suffered by each commodity and applying this percentage to the insured value of that particular commodity. In the case of goods which ordinarily are subject to leakage or loss or gain in weight, it is also customary and proper to first make allowance for such ordinary variation, adjusting the particular average on the remainder.

Effect of Average Clauses.—It will be observed that much of the work of underwriting resolves itself about the question of inserting clauses in the policy relating to particular average losses. The memorandum clause sets forth in considerable detail the percentage of damage which must be attained on various articles before claim may be made under the policy. Various other clauses are used in fixing the average franchises on particular commodities or in changing the franchises which are enumerated in the memorandum clause. These clauses come into play when a particular average adjustment is to be made. The percentage of damage having been determined, reference is made to the policy to see what the franchise is. Unless the percentage of loss equals or exceeds the franchise, there is no liability under the policy. If, however, the percentage of loss equals or exceeds the franchise, the loss is then paid in full. On the other hand, with an average clause containing a deductible franchise, unless the percentage or amount of the loss exceeds the deductible franchise, there will be no liability under the policy. The only particular average liability which ever exists in such cases is the liability in excess of the deductible franchise, whether this franchise is expressed as a percentage or as a fixed sum.

Cause of Loss.—The question of franchise, however, is not the only question raised by average clauses. There is the further consideration of the cause of loss. As pointed out in a previous chapter it is not every loss that is covered by a policy of marine insurance, but only those that are the direct result of the perils enumerated or of others of the same nature. The broad protection granted by the policy is, in many cases, modified by average clauses, which limit recovery, for instance, to losses caused by stranding, sinking, burning or collision. The cause of damage is ordinarily the first inquiry in loss cases, and if the

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loss is not occasioned by a peril insured against, no further action is taken. The cause of loss is not always easy to determine, as cargo which has been carried for long distances may be discharged in damaged condition without any apparent sea peril having intervened. In such cases test is usually made to determine whether the damage is the result of fresh or salt water, and if traces of salt appear further search is made for possible leaks in the deck or shell of the vessel. Even this loss may be found to be due to fault on the part of the ship, and therefore not recoverable under the policy.

Particular Average on Profits and Commissions.—Partial losses on profits and commissions and other interests which are increments growing out of the transactions involving the shipment of the goods, are settled on the same basis as is the loss on the goods themselves. The only question involved in such cases is whether or not there was a profit lost or a commission lost. The solution of this question is not always an easy one, as at the time of placing insurance on profits, an actual profit may have existed, whereas at the time of the arrival of the goods market conditions may have so changed that the apparent profit has disappeared. If the goods had arrived in a sound condition the assured would have had no profit and the question is naturally raised, should the mere fact of the goods arriving in a damaged condition enable the assured to recover a loss under a profit insurance which actually was not suffered. Some underwriters take the position that having accepted premium for the insurance of a profit which at the time actually did exist, they should respond in any event under such insurance if loss occurs. This position would seem to harmonize with the marine insurance theory of reimbursing the assured for loss on the insured value even if this amount exceeds the true value.

Particular Average on Hull.—Particular average losses on hull and machinery present many problems peculiar to this class of risk. There is a gradual and continual depreciation taking place in the structure and fabric of a vessel, which although perhaps imperceptible is nevertheless present. In the event of an accident occurring to the vessel, the question will often arise whether certain damage existing is the result of the casualty or of gradual deterioration known as "wear and tear." Such loss, while

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undoubtedly a partial loss of the vessel is not particular average, at least in so far as the perils insured against are concerned. In many cases it is necessary in effecting repairs to remove portions of the fabric of the ship replacing the old with new material. Since it is not always possible to separate the "wear and tear" from the casualty damage, the custom has grown as already explained of deducting "thirds new for old" to offset the replacement of "wear and tear" deterioration. It is important to understand how and where in the adjustment of particular average on hull, credit is taken for this "one-third" or such modified percentage as may have been named in the policy. It will be observed that the old material taken out of the vessel is of some value as scrap. This value is ordinarily determined by selling the old material. Question then arises as to whether or not credit for this old material should be taken in the adjustment before or after the deduction of one-third is made. Naturally it will be to the advantage of the assured if the deduction is first made and the "thirds" deducted from the remainder. However, this is not the method ordinarily followed, the prevailing rule being that the "thirds" are first deducted, credit then being taken for the value of the old material. The final result is the amount for which the underwriters must respond, each in proportion to the percentage of insured value for which he is liable.

Apportionment of Expenses.—It is not at all unusual to find that in cases where a vessel is sent to the repair yard to restore damage caused by perils insured against, that the owners will take advantage of the opportunity to make repairs or alterations which are solely for the owner's account and in which the underwriters are not interested. Certain charges, as for dry docking, are, of course, of mutual benefit to both underwriters and owners in such cases and some fair apportionment of these expenses should be made. Where, however, the repair work being done is solely for underwriters' account, the necessary expenses incidental to the repairs are included in the adjustment and paid by the underwriters.

Temporary Repairs.—It frequently happens that temporary repairs are made at a port of refuge, either because it is not practicable to effect permanent repairs, or because an ultimate saving can be effected by making sufficient repairs to enable the

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vessel to proceed under a certificate of seaworthiness to a port where the permanent repairs can be readily and more cheaply made. In such cases the cost of the temporary repairs are borne by the underwriters, it being assumed that such repairs have been reasonably and prudently made. Where, however, the owner desires temporary repairs made solely because of the delay involved in obtaining new parts, or because of the difficulty of obtaining the use of a dry dock at the port where the vessel then is, there would seem to be no reason why the underwriters should be interested in the cost of such temporary repairs. The underwriters on hull are not interested primarily in the prompt repair of damage; their obligation is merely to make good to the assured damage suffered, or to repair for his account such damage with reasonable diligence. If the owner, in order to obtain quickly the use of his vessel, desires to incur unusual expense to effect such end, these extraordinary expense must be borne solely by him.

Valuation of Hulls.—Attention has already been directed to the importance of inserting a fair valuation for vessels in policies covering particular average losses on hull and machinery. The necessity for this becomes apparent in the adjustment of particular average claims. An underwriter being bound by the valuation expressed in the policy, if made in good faith, whether this valuation be high or low, becomes responsible for the percentage of particular average which the amount insured under his policy bears to the value of the vessel as stated therein, subject, of course, to the average franchises and other conditions of the policy. Thus on a low-valued vessel he assumes a relatively greater proportion of loss than in the case of a high-valued vessel.

Cause of Damage to Hulls.—As in the case of particular average on cargo, the cause of loss is a subject of pertinent inquiry in connection with claims on hull and machinery. In many instances the cause of loss is apparent, but in others, especially in connection with steamers or other mechanically propelled vessels, many and serious losses occur without any apparent or unusual conditions having been encountered during the voyage. Propeller blades will be lost, stern frames will be fractured, and accidents will overtake the machinery without any usual strain being noticed. In such cases, it often becomes difficult to

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determine whether or not the damage is due to latent defect or to the action of some external force. Obviously, if the policy, as is usual, contains the "Inchmaree" clause the question is of less importance, but even when this clause is used many perplexing problems arise with respect to particular average claims.

Partial Loss of Freight.—Partial losses on freight present a more difficult problem, freight not being a tangible interest, but one which is dependent on both the cargo and the ship. It therefore follows that a partial loss of freight may result because of loss to ship or cargo or to both. Partial loss on this interest can be determined only by reference to the goods and the vessel. It will be interesting to observe a few of the ways in which a total loss of part or a particular average may arise on the interest of freight. In a policy on freight where the freight is at the risk of the ship and the amount insured under the policy is divisible into parts, as, for instance, in the case of a policy covering a voyage consisting of two or more sections, each of which is severable and the amount of freight applicable to each section is determinable, if in this case the ship is lost after one or more sections of the voyage are completed, then there will be a total loss of part of the freight equalling the amount of the unearned portion of the freight contract.

Collectible Freight.—If the bill of lading freight is collectible at destination and through perils insured against part of the cargo is lost, or a portion of the cargo, because of damage cannot be delivered in specie and the vessel is thus prevented from earning the freight on this particular portion of the cargo, a total loss of part of the freight will result. Where through the occurrence of perils insured against the voyage is broken up by mutual consent short of the port or place of destination and freight *pro rata itineris peracti* is paid, the difference between the amount so paid and the gross freight at risk is a particular average on freight.

Substitution of Vessel or Cargo.—If, in the event of a vessel making a port of refuge and being unable to prosecute the voyage, another vessel is obtainable to complete the voyage at a less cost than the gross freight at risk, the vessel owner is obligated, if possible, to make such substitution. In such a case, there is a particular average on freight equal to the cost of hiring the new vessel. A freight loss of this character is known as a salvage loss.

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When the whole cargo is lost without the loss of the vessel itself and another cargo is taken at the same port, intended for the original destination, the loss, if any, on the freight is again a salvage loss and is the difference between the original freight and the new freight. This rule will hold good only in case the substituted cargo is to be carried to the same port as was the original cargo, otherwise there will be an abandonment of the voyage. The substitution of an entirely new voyage will result in the total loss of freight on the original cargo.

Freight Not Always Involved in Damage to Ship or Cargo.—While the determination of a partial loss of freight is dependent on what happens to the ship or cargo, it does not follow that because there is a particular average loss on vessel or cargo, that there will necessarily be a particular average loss on freight. In fact, the reverse is more often true. Many partial losses will be suffered by cargo, where the freight will in no wise be affected and the same is true in the case of particular average on hull. A partial loss on freight is more apt to result in connection with the total loss of a part of the cargo, or in connection with a partial or total loss affecting the vessel which results in the breaking up of the voyage. Cargo delivered in a damaged condition but still in specie, of course, must pay full freight to the vessel and consequently no particular average on freight accompanies the particular average on cargo. The freight so paid as in the case of prepaid or guaranteed freight becomes part of the value of the goods and as previously indicated, if insured by the cargo owner, enters into the adjustment of the particular average on cargo. In the event of disaster the master is bound to use every reasonable effort to carry cargo forward to destination either in his own vessel, or if procurable in a substituted vessel, and if he, through neglect, fails to do this and there results a particular average on freight, the underwriter on freight will not be liable for such loss.

Protest of Master.—In order to establish a valid claim under a policy of marine insurance in its ordinary form, it is necessary to prove that some fortuitous accident has overtaken the vessel, or that the damage suffered has resulted from causes beyond the control of the master or the owner of the cargo. Since the underwriter assumes liability only for damages occurring

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through the fortuitous causes enumerated specifically in the policy and from other causes of like nature, and not all damage irrespective of cause, documentary evidence showing the occurrence of such peril or of the existence of fortuitous circumstances which might readily have caused the damage may be demanded by the underwriter. Such evidence is ordinarily furnished in one of two ways. Reference is made either to the log book of the vessel showing that accident overtook it, or that heavy weather or other fortuitous circumstances were encountered during the voyage, or preferably the evidence is set forth in a document called the master's protest. In this document, the master of the vessel, under oath, sets forth the events of the voyage, stating particularly the circumstances under which the damage suffered is alleged to have occurred or might have occured and protesting against the master or the vessel being held responsible for such loss. This document serves a double purpose in establishing the facts of the casualty and also in relieving the vessel *prima facie* from liability for the damage.

Proofs of Loss.—It is necessary also in order to establish a valid claim for loss on cargo that certain documents be produced, showing that the right to receive payment of loss on the property is vested in the claimant. The documents necessary to so establish the claim are the following, viz.:

1. The bill of lading for the goods, which is the ship's receipt showing that the goods in question were actually on board the vessel which has met with disaster or on which damage is alleged to have overtaken the goods. Owing to the fact that short shipments frequently occur after the bill of lading has been issued, it is always prudent to have the transportation company confirm that the goods were actually laden on the vessel named in the bill of lading.
2. The invoice must be produced, which shows the value of the goods and the accruing charges. From this document the underwriter is enabled to determine whether or not the amount reported for insurance is the sum for which he assumes responsibility under the policy.
3. The insurance policy or the certificate of insurance, if one has been issued, must be produced. This document proves the insurance and also establishes to whom payment of loss is to be made.

Duplicate Documents.—If the insurance certificate has been issued in duplicate both documents should be surrendered. If

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this is not practicable, indemnity may be taken against the possibility of other claimants appearing with duplicate documents. These documents being negotiable merely by endorsement, the necessity for this precaution will be apparent. If a survey and appraisal of the damaged property has been made the certificate of the surveyor and appraiser will also accompany the loss documents.

Certificate of Enrollment.—In the case of a total loss on hull, a further document is required, known as the certificate of enrollment, proving by governmental document, the ownership of the vessel. It is also proper in the case of loss on freight to demand the production of the freight list or the charter party, in order to prove the amount of freight which was at risk.

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CHAPTER 20

TOTAL AND CONSTRUCTIVE TOTAL LOSSES. WAR LOSSES

Definition.—A total loss is defined by Phillips, Section 1485 and 1486 as one wherein the subject of an insurance, "by the perils insured against, is destroyed or so injured as to be of trifling or no value to the assured for the purposes and uses for which it was intended, or is taken out of the possession or control of the assured, whereby he is deprived of it; or where the voyage or adventure for which the insurance is made is otherwise broken up by the perils insured against. In a total loss the assured is entitled to recover from the underwriter the whole amount insured by the policy on the subject so lost."

Constructive Total Loss.—A constructive or technical total loss on the other hand is one in which the property has not actually become a total loss, but has been so injured that the part or remnant remaining is impossible of repair at a cost less than the value of the repaired subject, or if not badly injured is in a position of such difficulty from the viewpoint of salvage, that the cost of recovering it would equal or exceed its value when recovered. A technical total loss may result, however, by agreement or by implication of law when property is damaged beyond a fixed percentage of its value.

Adjustment May be Simple.—In many cases the adjustment of a total loss claim is a simple matter, as where a vessel is in collision and sunk on the high seas, with no part of her value remaining and with no possibility of recovery of the vessel through the exercise of salvage operations. While such cases are more or less frequent, it is quite often the case that a disaster overtaking the vessel will present the question as to whether or not there is such a destruction as will warrant the assumption of total loss and settlement on that basis.

Assured Must Endeavor to Preserve Property.—It is the duty of an assured by implication of law and by contract under the

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Sue and Labor clause to use the utmost endeavor in the event of casualty overtaking his property to preserve it and to prevent its becoming absolutely worthless. The measure of duty that is placed upon him in this respect, is that measure which a prudent uninsured owner would exercise under similar circumstances. The mere fact that the assured has an insurance policy under which he may obtain indemnity for his loss is no valid reason why he should not exercise the same care and diligence in preserving and recovering the property as would be the case were the loss to fall directly on him. This point of view is too often overlooked by the assured, with unfortunate consequences to the underwriter. It is primarily for this purpose that the Sue and Labor clause is inserted in policies thus converting into an express obligation under the policy that which existed as a duty implied by law, and requiring that the assured use due diligence in taking measures for the saving and preserving of the damaged property.

When Is a Thing Lost?—The question arises in many cases whether or not a thing is lost. A vessel may strike on a rock, and filling with water sink, but in such a position as to make easy and comparatively inexpensive, operations for the raising and repair of the vessel. In such case it cannot be said that the vessel is lost. Or again, a ship may be on fire and partially burnt. In order to extinguish the fire, the vessel may be flooded to such an extent that it settles on the botton, but the cost of pumping out and floating the vessel and repairing the fire and water damage may represent but a small percentage of the total value saved. In such a case it cannot be said that the vessel is a total loss. The same rule applies to cargo. However, whether or not under similar circumstance damage to goods will result in a total loss depends in large degree on whether or not the cargo is perishable. A vessel, slightly injured in collision, but sunk, may result in the total destruction of the cargo if it be susceptible to rapid disintegration by water as in the case of a sugar cargo. On the other hand, a vessel so badly injured by collision or so badly ashore as to make salvage operations on the vessel impractical may result in but little injury or expense in connection with a non-perishable cargo such as pig copper.

When Does a Constructive Total Loss Occur?—The fact remains, however, that a vessel or its cargo may not be an actual

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total loss and yet be so badly damaged or in such position of difficulty that the cost of repairing or the cost of extricating the vessel or the cargo from its position, will be so great that a prudent uninsured owner would not undertake any salvage operations on the damaged vessel or its cargo. In such a case he would conclude that the cost of extricating the vessel and cargo from their difficult position and of making the necessary repairs which would restore the vessel to her former condition and the cost of reconditioning the cargo to make it salable, would exceed the cost of the vessel and cargo when so restored. If this state of facts appears, it is proper for the assured to tender abandonment of the vessel and cargo to the underwriters and claim for a total loss under the name of a Constructive or Technical Total Loss. It will be evident that in many cases the conclusion arrived at is based on supposition rather than on fact, but if the conclusion reached as to constructive total loss is a reasonable one in the light of existing facts, even though subsequent events prove this conclusion to have been erroneous, the parties will be bound by the judgment reached and mutually accepted.

American and English Practice Differs.—One of the greatest differences between marine insurance practice in this country and in England is found in connection with the subject of constructive total loss. Under the English practice, unless a vessel is so badly damaged that the cost of salving and repairing it would equal or exceed the value of the vessel when repaired, the insured value being assumed to be the repaired value, no claim can be made for a constructive total loss. On the other hand, a rule has been in force in the United States which is more favorable to the assured and provides that in the event of a vessel being damaged to such an extent that the cost of salvage and of repair will exceed fifty percent (50 %) of the repaired value, circumstances exist under which the assured may claim as for a constructive total loss. The theory of constructive total loss applies both in England and the United States not only to damaged hulls, but also to damaged cargo or loss of freight. In connection with the insurance of hulls since the adoption of standard forms for use both in the English and American markets, the English custom has gained ground and a clause to this effect now appears in most hull forms used in America. The English

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theory seems the more logical as a basis for underwriting, the desire of underwriters being to discourage rather than to invite abandonment.

Abandonment.—The subject of abandonment which arises in connection with constructive total loss is one of great difficulty and presents many perplexing problems to both underwriter and assured. The practice is an old one and there is no definite set of rules governing the tender or acceptance of abandonment. In the case of an absolute total loss, where there is no possibility of saving or of repairing the vessel, it is not necessary for an assured to abandon in order to claim a total loss. It is customary, however, for underwriters to take assignment of the property on payment of the total loss. Where there is not an absolute total loss, if the assured would exercise the right to claim from his underwriters, as for a constructive total loss, he must tender abandonment to his underwriters.

Tender of Abandonment.—In this tender the assured must set forth the facts upon which he bases his allegation that the vessel is in such condition that a prudent uninsured owner would not deem it wise to undertake to save and repair the vessel. If the interest insured be freight or cargo, a similar condition must be shown to exist. No special form of abandonment is required and no special form of acceptance by the underwriter is provided. When abandonment is tendered and accepted, the underwriter pays the full insured value and takes the remnant of the property as it is, subject to whatever liens may exist against it. The mere acceptance of abandonment by the underwriter, however, does not make it incumbent upon him to accept the ownership of the wreck or remnant of the property, as such acceptance might put him in possession of property of less than no value, that is, property so burdened with liens as to be a liability rather than an asset.

Validity of Abandonment.—The validity of an abandonment depends upon the facts existing when it is made. If, on the basis of those facts, the tender of abandonment is accepted the relation of the assured and underwriter are definitely established. Subsequent improvement in the conditions surrounding the abandoned subject will not affect the validity of the abandonment, nevertheless by mutual agreement the abandonment may

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be withdrawn and the former relation existing between assured and underwriter reëstablished. If the notice of abandonment as given to the underwriters sets forth facts which constitute a valid reason for the acceptance of the tender, but it is later proved that the facts were false and intended to deceive, the abandonment, of course, will not be effective as it will be tainted with fraud and be void. Abandonment once made by the assured and accepted by the underwriter is irrevocable without the consent of the underwriters.

Tender Must be Promptly Made.—An assured must not unduly delay tendering abandonment to underwriters. He must act with due diligence, so that if he is within his legal rights in making the abandonment and does not attempt to make any efforts to save the property, the underwriter will have the right to take possession of the property and do what he can to minimize the loss. It will have been observed in connection with the Sue and Labor clause that while the assured is required to take measures for the preservation of the property, and the underwriter is permitted to intervene in order to safeguard the property, such acts on the part of either assured or underwriter are not to be considered as a waiver or an acceptance of abandonment. Underwriters may always refuse to accept abandonment. As soon as a case appears hopeless, it is the usual practice for the owner to tender and the underwriter to refuse abandonment. The rights of both parties having thus been preserved, the assured continues to seek means to recover the property under the requirements of the Sue and Labor clause, until the absolute proof of the constructive total loss of the property can be demonstrated.

Acceptance of Abandonment.—It is not necessary for an underwriter to indicate his acceptance or declination of a tender of abandonment. However, delay in declining the tender, if unduly prolonged, may be considered as an acceptance. A tender may also be withdrawn at any time prior to acceptance. If the tender is accepted by the underwriter, it must be by persons whose measure of authority gives them the right to make such acceptance. It does not follow that because a payment is made on account after tender of abandonment that the tender has been accepted. An acceptance of the tender is an implied admis-

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sion of a right to make abandonment. It will also be observed that an abandonment made and accepted by a group of underwriters, as is frequently the case in hull insurance, does not make the underwriters liable as joint owners, but merely as individual owners of shares in the salvage. If the underwriters upon the acceptance of abandonment do not wish to receive the salvage, they must give immediate notice to the assured of their disclaimer of such transfer.

Effect of Acceptance.—The effect of the acceptance of abandonment by the underwriter and the transference to him of the wreck or salvage is to put the acts of persons, in whose care the property may be, at the risk of the underwriter. The assured himself becomes the trustee or agent of the underwriter or if there be several underwriters he becomes trustee or agent severally but not jointly. In the same manner the agent of the assured, for instance, the master of the vessel in the case of a hull abandonment, becomes the agent of the underwriters. The underwriters after acceptance, become to all intents and purposes the owners of the salvage, gaining all the benefits which such ownership carries with it, and incurring all the burdens, to the extent of their respective shares, which such ownership implies.

Abandonment May be Deferred by Mutual Consent.—It is also proper for the assured and the underwriter after an accident has occurred, by mutual consent, to leave the question of abandonment in abeyance, the rights of neither to be affected by this arrangement. Whether or not the abandonment is finally made will depend upon the ultimate results of the disaster. The rule of abandonment is one which works to the advantage of the assured to the extent that it is optional with him whether or not he abandon. An underwriter cannot compel an assured to abandon. In a recent case, that of the Steamer Congress, where the vessel was so badly damaged by fire as to permit a valid claim for constructive total loss, owing to market conditions, the value of the hull in its burned condition was worth more than the value of the vessel in the policies of insurance. Had the assured tendered abandonment and had the tender been accepted by the underwriters, they would have paid for a total loss, but under the abandonment would have obtained title to all the salvage remaining which in this particular case was worth

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more, as the event proved, than the insured value of the vessel. The assured being unwilling under the circumstances to abandon, an arrangement was made with the underwriters by which a partial loss of ninety-five percent was paid and no abandonment made. The owners kept the remnant of their vessel, which they sold at a price exceeding the insured value of the whole. Repairs were made by the new owners and the vessel then was worth considerably more than twice the original insured value.

Assignment Dates from Time of Loss.—It will be observed that in an abandonment case the assignment dates from the time of loss and the only property transferred by such assignment is the property that existed at the time of the loss, subject to its encumbrances. The property received by an underwriter upon the acceptance of abandonment is called salvage. This word is also used to describe the amount of money which is awarded to a voluntary salvor or to one who, under contract, undertakes salvage operations. These two meanings should not be confused.

Abandonment of Vessel Involves Freight.—In connection with the subject of abandonment one peculiar feature exists which presents a measure of injustice that has been corrected by a clause inserted in most hull policies. An underwriter accepting the abandonment of a vessel becomes to all intents and purposes its owner and as such is entitled to any freight earnings which may accrue after the date of the accident, if the vessel is repaired and enabled to proceed to her destination. The result of this is, that the underwriter on the freight having an abandonment made to him at the same time and accepting abandonment has no salvage whatever, as the freight earned goes to the underwriter on the ship. This injustice has been corrected in most cases by inserting in policies on hull a clause reading:

"In the event of total or constructive total loss, no claim to be made by the underwriters for freight, whether notice of abandonment has been given or not."

No Abandonment if Loss Not Due to Insured Peril.—It will be evident that no abandonment can be tendered under a policy containing a "Free of Particular Average" clause if none of the casualties enumerated in such clause has occurred. For instance, a cargo might be insured under the usual "Free of Particular

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Average (F.P.A.)" terms and the vessel might not be stranded, sunk, burned or in collision, yet through the springing of a bottom plank in heavy weather or other fortuitous causes, the cargo might be damaged ninety-five percent. Under the American practice requiring but a moiety of damage in order to permit abandonment, no abandonment could be made in this case because the loss was occasioned by a peril not excepted in the free of average clause. Mere delay in the forwarding of goods to their destination caused by a peril insured against will not give the right to abandon.

Total and Constructive Total Loss of Vessel.—To have a valid claim for total loss on vessel, the vessel must be destroyed or lost or reduced to a condition of irreparability. What irreparability is in any case is a question of fact and may be judged most accurately by the action which a prudent uninsured owner would take under the state of facts presented. The usual question is: "Will the cost of salvage and repairs exceed the repaired value?" As has already been indicated, it is an exceedingly hard matter to determine what is the real value of a vessel. In order to avoid this question many hull policies provide that the insured value shall be taken as the repaired value. In determining whether or not there is a constructive total loss of vessel, there should be brought into consideration any temporary repairs and the permanent repairs which may be necessary to restore the vessel to its former condition. To this sum is added the necessary amount of salvage which must be paid in order to bring the vessel to the port of repair. If the casualty has resulted in general average sacrifices or expenditures for which contribution will be received by the owners, deduction should be made of such expected recovery.

Total Loss of Cargo.—In the case of cargo, a total loss will occur when the property is totally lost or destroyed as in a case where a vessel is sunk to a point precluding recovery of the cargo or where the cargo is completely destroyed by fire. It will often happen in case of fire that a cargo will not be touched by fire, but its value completely destroyed by the smoke or by water or steam used to extinguish the fire. Goods may also be rendered worthless not because of their destruction by perils insured against, but because the action of the peril has completely

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changed the nature or specie of the insured subject. It may also be that a constructive total loss of cargo will result when the goods, while not excessively damaged, will cost so much to carry forward to destination that their value at destination will not equal the expenses necessary to place them there. This is quite frequently the case with bulky articles of small value, where the cost of handling and reconditioning is out of all proportion to the intrinsic value of the commodity.

Total Loss of Freight.—A total loss of freight occurs when a ship and its cargo become a total loss or when there is an indefinite detention of the ship or when other circumstances exist which make it impracticable to forward the cargo and so earn the freight. In the case of a round trip charter if there be a total loss of the ship and cargo on the homeward passage, and the freight is a lump sum for both outward and homeward passages, there will be a total loss of the entire freight. The same rule will apply with respect to a constructive total loss of freight. If a vessel in ballast proceeding under charter to a loading port is lost, there will be a total loss of the entire freight on the proposed voyage. If goods under a collectible freight bill of lading arrive at port of destination in specie but in a worthless condition through perils insured against, there will be a total loss of freight which will be at the risk of the cargo and not the vessel owner, and will be adjusted in connection with the settlement of loss on the cargo. A constructive total loss of cargo through war perils results in a constructive total loss of freight, if the insurance on freight is against war risks.

Proximate Cause.—It will be observed that the peril causing loss does not determine whether a loss is general average, particular average or total loss. The cause of loss is ascertained in order to determine whether or not the loss incurred results in a liability under the policy which is being considered. In determining this question, however, it is the proximate and not the remote cause of the loss that is the deciding factor in establishing liability. This subject has been considered in a previous chapter, but the question of proximate cause becomes vital in the consideration of claims, since frequently, doubt will exist as to which of two perils, only one of which is insured against, operating simultaneously or in succession, was the proximate and an

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efficient cause of the loss. The general insurance of war perils, and the fact that war and marine perils on the same property are insured with different underwriters give rise to many questions in regard to proximate cause. A captured vessel, or a vessel deviating under express governmental instructions, may be overtaken by marine peril while in a perfectly safe and proper position. Although no doubt will exist that the immediate cause of loss is a marine peril, underwriters will be loath to admit liability, claiming the proximate cause of loss is the capture or the deviation under instructions, thus exposing the vessel to a peril which would not have been encountered had the vessel been free to proceed on her voyage. Each particular case must be decided on its merits, no hard and fast rules existing for the determination of these questions. The matter is one of fact and from the facts obtainable in each case the proximate cause of loss must be determined.

War Losses. Missing Vessels.—War losses fall into the same general classes as marine losses, but experience has proved that owing to the nature of the peril, the majority of such losses are total. The question of missing vessels was an important one during the recent war. Here again, the real point at issue was the proximate cause, but in these cases the question had to be decided by circumstantial evidence alone, and therein lay the difficulty. Prior to the outbreak of the World War it was a well-established, and rarely disputed, principle of marine insurance law that a missing vessel was presumed to have been lost by a marine peril. This was a reasonable theory in that naval operations were rather restricted and unless the circumstances were unusual, definite particulars of the destruction of a merchant vessel by war peril would in due course be announced. After belligerent governments began using mines, there was always the possibility that a missing vessel had been destroyed by a drifting mine. The progress of the late war saw the introduction of entirely new methods of naval warfare, in the sowing of mines at sea, in the unrestricted and illegal submarine activities and in the illegal sinking of merchant vessels by raiders. It therefore came to pass that vessels on comparatively short trips, say of three or four days' duration, and in coastal waters would sail but never again be spoken. To assume and to decide that such losses were the result of marine perils would be to take an unjust atti-

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tude with respect to marine underwriters, especially if it could be established that the vessel was perfectly seaworthy when it sailed and during the ordinary time in which the passage could be accomplished, there was no record of storm to which the loss of the vessel might be attributed. Accordingly cases are on record in which, under such a state of facts, the loss was held by the court to be due to war perils. Or course, as distances increase and as the usual length of voyage becomes greater, it is increasingly difficult to furnish satisfactory circumstantial evidence tending to establish the cause of loss of a missing vessel. However, while there are many cases of missing vessels still pending, sufficient judgments have been rendered to indicate that the former rule of marine loss in such cases is no longer presumed, but that the whole question is open for decision on its merits.

Presumption of Cause of Loss.—In the ordinary case where there are no war perils involved, where the vessel sailed in a seaworthy condition and no evidence is forthcoming to indicate that the vessel could have been lost by any peril other than those insured in the policy, it has always been assumed, after the lapse of a reasonable length of time without tidings from the vessel, that it has been lost through an insured peril. The length of time which must elapse before a vessel is presumed to be a total loss depends upon the circumstances of the particular case, with respect to the length of the voyage, the character of the voyage, the season of the year and other considerations of a similar nature. Under English practice when a vessel has been missing for such a length of time that it can safely be presumed to be a total loss, the vessel is posted at Lloyd's as missing. Ten days after such posting the loss becomes due and claim can be made on the underwriters. In this country the loss is usually due thirty days after the presumption arises that the vessel is lost. Formerly there seems to have been a custom that such presumption arose after the lapse of a year and a day, but this custom is now obsolete. During the war when conditions were such that prudence required that there be no haste in determining the status of a vessel presumed to be lost, the war and marine underwriters on the risk were usually disposed each to settle for fifty percent of the loss without prejudice, permitting the question of liability to remain open until such time as evidence was forthcoming to prove the

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cause of loss. It frequently happened during the World War, that months after a vessel had been reported missing, a belligerent raider would return to its base and report the sinking of the vessel.

Perplexing Problems.—It is not alone in regard to missing vessels that the war has created doubt as to the proximate cause of loss, but cases have arisen where all the circumstances were known and yet the question was one requiring judicial determination. Thus in the case of a vessel sailing without lights or sailing over an unlighted course under governmental instructions, with resultant stranding or collision, the question was raised as to whether the proximate cause of the loss was one arising out of the conduct of the war or whether it was due to an actual peril of the sea. New problems also arose in connection with losses caused by submarines. For instance, a submarine while submerged might be run into by a merchant vessel and a question would arise whether this was a marine or a war loss. Then, too, cases occurred where a submarine in attempting to emerge lifted directly under a merchant vessel doing great damage. Such casualties occurred not only at sea but in harbors where the emerging submarine was not a belligerent vessel but one belonging to the same nation as the port. In other cases, vessels were torpedoed, though not injured to such an extent that they were sunk, but in making port, or in efforts to drive them ashore, they encountered marine perils which resulted in their ultimate destruction. Other novel losses, which resulted only because a state of war existed and yet in their nature seemed to be due to marine perils also brought up the question of proximate cause.

Doubtful Cases.—In addition to these cases there have been others, where doubt has arisen not only regarding the proximate cause of loss, but also whether or not the inciting cause of the loss was one against which either the marine or the war policy would furnish protection. Consideration has already been given to these cases and to the methods of furnishing protection against such perils. War adds many new problems to marine underwriting, some of which only show themselves to be problems after some unexpected and unforeseen type of loss has overtaken the venture. War losses are adjusted on the same basis as marine losses, the principles of general average, paticular average and total loss applying with equal force to this character of loss.

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The Right of Subrogation.—No consideration of the subject of marine losses would be complete without making some reference to the right of subrogation. While the underwriter may be liable under the policy of insurance for the loss incurred it does not necessarily follow that he alone is responsible for the injury suffered. In many cases there arises, because of the accident causing the loss, a liability on the part of some third party to respond for the injury suffered by the assured through the damage or destruction of his property. Thus in a collision case, it often happens that one of the colliding vessels alone is at fault, and consequently is liable for the damage caused except in so far as such liability may be limited by law. This liability on the part of the colliding vessel does not, however, exonerate the underwriters of the innocent vessel from their obligation to the owner under their policies of insurance. It would be manifestly unfair, however, for the underwriters to respond for the loss, and for the owner to retain his right of action against the owners of the offending vessel. Accordingly in order that the equities may be preserved, upon the payment of loss by the underwriters, they are by law vested with the benefits accruing from the right of action, which has arisen in favor of the assured. This is known as the right of subrogation. Through this right the underwriter is clothed with all the benefits arising from claims against third parties, which have arisen since the date of the casualty, and the assured is obligated to lend his name and good offices in the collection of such claims. The expense of collection, legal and otherwise will, of course, be assumed by the underwriters in proportion to the interest which they have in the claim. If the settlement under a policy covering the entire interest has been for a total loss the underwriter is entitled to the benefit of the right of action in full, if on the other hand the loss is but partial or the property is not fully insured, the underwriter will be subrogated only to the extent that the assured has been indemnified. The right of subrogation arises at the moment of payment.

Salvage.—This right of subrogation must be distinguished from the interest in the subject matter itself known as salvage, which the underwriter obtains under an abandonment or by assignment. In the case of a particular average the assured naturally retains physical possession of the property, nevertheless the underwriter

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by virtue of the payment of partial loss, is subrogated to the rights of the assured against third parties, because of the loss. In the case of a total or constructive total loss, the underwriter obtains a full interest in the salvage, assuming that the property has been fully insured, and in addition by this right of subrogation is vested with a full interest in all claims arising out of the casualty.

Carrier's Liability.—In considering the skeleton form of cargo policy, it was stated that most underwriters incorporated a clause under which the assured warrants that the underwriters shall be free of any liability for loss or damage to goods in possession of a land or water carrier or in possession of any other bailee who may be liable for such loss or damage by law, or under an insured bill of lading or under a rate of freight that includes insurance or otherwise. It further stipulates that the policy shall be void with respect to goods shipped under a bill of lading containing a provision that the carrier is to have the benefit of any insurance that may be placed on the goods.

Carriers Slow to Respond for Losses.—As already indicated, a common carrier by land is held to a high degree of accountability, while a common carrier by water, while relieved of much of his legal liability under statute, is nevertheless still charged with considerable responsibility in connection with the safe-guarding and protecting of property in his custody. It is a well-recognized fact that collections from common carriers are slow and in many cases uncertain, the carriers taking advantage of every possible technicality in order to avoid payment of losses due to their negligence. On the other hand, in order that modern business may continue uninterruptedly, it is necessary that merchants be promptly reimbursed in the event of loss or damage overtaking their property. Thus it has become the custom for underwriters to reimburse merchants for losses to their property caused by perils insured against, but which are due to the negligence of the carriers, the merchants at the same time filing claim and endeavoring to recover from the carrier. In the event of recovery, the merchants reimburse the underwriters for the payment made.

Benefit of Insurance Clauses.—In cases where this condition exists, the carriers, knowing that the merchant had been reimbursed for his loss, have refused to settle claims, taking the posi-

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tion that the merchant being reimbursed by his underwriter, had really suffered no injury. In order to further strengthen this position, clauses were inserted in bills of lading by which the carrier claimed the full benefit of any insurance that might be effected upon or on account of said goods. The validity of these clauses was doubtful, but in order that the underwriters might not be embarrassed by the presence of such clauses in bills of lading they inserted in their policies, another clause making the policy void with respect to merchandise shipped under bills of lading containing the stipulation that the carrier should have the benefit of any insurance on the goods. This had the effect of annulling the advantage which the carrier hoped to get by his benefit of insurance clause. The courts have upheld the validity of this clause in insurance policies.

Loan Receipts.—However, this clause in an insurance policy left the merchant without protection, so a further stipulation was made in the policy by which the underwriter agreed, with the assured, that in the event of loss or damage covered by the policy, for which the carriers might be liable, the underwriter, in order to place the merchant in funds, would advance to him as a loan, an amount approximating the loss suffered. This loan would be repaid if recovery were obtained from the carriers except in so far as such recovery was insufficient under the terms of the policy to reimburse the merchant for his loss. A regular form of loan receipt was prepared in such cases, which was signed by the assured. The carriers then endeavored to take the position that the loan receipt was but a subterfuge, and that owing to the fact that the merchant was really reimbursed by the underwriter for the loss which had occurred, the merchant was not injured by the non-payment of the loss on the part of the carrier. This question has been a disputed one for sometime but in a decision recently handed down by the Supreme Court of the United States, the validity of the loan receipt has been finally established and the carrier is held to a strict accountability under the liability imposed upon him by law.

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CHAPTER 21

BROKERS. MUTUAL COMPANIES

The Business of Insurance.—There remains for consideration what may be termed for want of a better name, the mechanical side of marine underwriting, that is, the physical processes in connection with the underwriting of risks. This subject naturally divides itself into three parts, first, the method of contact between the assured and the underwriter, second, the conduct of the underwriter's own organization, that is, the incorporated insurance company, and third, the accountability of the underwriter to the public, for, having received, by the grace of the public, the right to conduct the business of insurance, the public demands that the stewardship of this privilege be revealed to it through the annual statement of the affairs of the company to the various state insurance departments. These three phases will be considered in this and the following chapter.

Brokers.—The contact of the public with the underwriter is established in one of two ways, first, directly either by personal interview or through the mail, and second, through an intermediary, a technically trained expert, specializing in the business of marine insurance and known as the insurance broker. The special agent, so common in other branches of insurance, is practically unknown in marine insurance. While the direct method of contact with assured and underwriter continues to a considerable extent, especially in connection with mutual insurance, it is not surprising that, in a time when efficiency is one of the gods at whose feet business men worship, the broker should gain a place of ever increasing importance in the marine insurance field. He may be called the middle man of the marine insurance market, knowing accurately market conditions, and acting as the distributing medium between the underwriter and the merchant.

Not a New Factor.—The broker is in no sense a new factor in the marine insurance market. As early as the fifteenth century reference is found both in England and Continental countries

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to the activities of insurance brokers. Individual underwriting probably created the condition which made useful the work of the broker. It will be recalled that in England, at least, for some time private underwriters conducted their business in their own homes. It was a great aid to the merchant, to be able to engage the services of one who knew where the underwriters lived and who would take the policy from house to house obtaining the signatures of various underwriters until the whole amount was taken and the policy of insurance completed. With the gathering of the individual underwriters under one roof, the same need of an intermediary between assured and underwriter continued, and the broker passed from desk to desk obtaining signatures. Even today, at Lloyd's, the room is not open to the public, but authorized brokers, some of whom are themselves underwriting members of Lloyd's, perform this important and necessary work in the placing of marine risks.

Brokers Indispensable.—In this country, the broker appeared early in the insurance market and has grown with the development of the business and now performs an indispensable service in the placing of marine risks. His work has in principle changed little, for as it was necessary four hundred years ago to visit fifty individual underwriters to place a risk of £10,000, so today it is sometimes necessary to obtain the aid of fifty incorporated insurance companies in order to place a risk of $1,000,000. The values coming into the market are proportionately larger, but the law of supply and demand works inexorably and the market rarely becomes larger than is needed for the ordinary line, so that brokers still, as in the older days, wear beaten tracks between the offices of the underwriters.

Occupies an Anomalous Position.—The broker occupies a somewhat anomalous position in the field of agents. Ordinarily an agent is paid by his principal. With the insurance broker, however, this condition is reversed. He is engaged by and acts as the agent of the assured, but is compensated by the underwriter. It is, of course, true that the merchant indirectly pays for the service rendered in the increased cost of insurance, nevertheless, it is an indirect charge, which does not make the same mental impression as an item of brokers' commission would if added to the bill for insurance premium. If the charge were

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so made it would doubtless result in more direct transactions between assured and underwriter, but whether this would work to the advantage of either assured or insurer is altogether problematical. The average assured needs the services of a highly trained expert in whom he has a confidence that he might not have in an underwriter who would be one of the parties to the contract. A disinterested intermediary tends, at least, to calm the mind of the assured who, as a rule in this country, is quite ignorant of the principles of this exceedingly important part of his commercial transactions. An expert broker not only is of value to the assured, but he performs a distinct service to the underwriter in relieving the latter of the necessity of explaining to inexperienced assured their policy obligations and in preparing for the underwriter proper declarations of insurance from the inadequate reports too often submitted by the assured.

The Broker Offers Service.—The broker, then, offers himself for employment as a specialist, as an expert in the principles and practice of marine insurance. A broker has but one thing to offer to the assured and that is service. Service in its broadest meaning is the sole defendable reason for the existence of the able group of brokers found in the marine market. The comparative success or failure of individual brokers or of firms of brokers rests in large part on the interpretation they give to this word service. It is not enough that the broker place the risk which his client sends him. He must place it with the underwriters having the greatest security and the best reputation for fair dealing with the assured. This, however, represents in its barest outline the duty of the broker.

A Trained Expert.—In soliciting business, the broker presents himself to a prospective client as a trained expert in the business of marine insurance. He offers to obtain the kind of insurance which this merchant or shipowner needs at a less cost than he is now paying, or to provide better insurance at the same cost or at a cost slightly greater than the prospective client is now paying, which latter will actually result in a reduction of cost on account of the lessened risk remaining at the charge of the assured. He further offers to take better care of the client's interests, to relieve him of all responsibility in regard to the insurance except the duty of promptly reporting the facts nec-

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essary to enable the broker to place the insurance. He further offers, in the event of loss, to conduct the negotiations relating to the adjustment and payment of said loss without trouble to the assured. The performance of these duties and others unnamed, but which are inseparably bound up in the complete execution of those which are named, is furnishing service. Success, and with it prosperity, will come to those brokers who make good their promise by performance in a manner better and more expert than their fellows.

The Broker Knows the Market.—The broker, as a trained expert, requires a degree of knowledge approximating in a measure that which the expert underwriter or loss adjuster has. The broker obtains from his client a bare statement of facts concerning his commercial operations, the kind of goods in which he trades, the routes of shipment and other necessary items to enable him to gain a clear insight into the kind of risks upon which he must obtain insurance. Having this information in hand, he applies his knowledge of marine insurance to these facts, deciding what form of protection is best suited to the particular case. He carefully weighs the comparative gain in the use of clauses granting a high degree of protection with respect to average, for instance, against the increased cost of such protection. Having reached a conclusion he may first submit and explain to his client the form of insurance which he would advise and obtain the consent of the client to accept such a policy. Of course, if there should be any doubt in the mind of the broker as to the possibility of obtaining the kind of protection which he thinks the client needs, he will first test the market to learn if there are underwriters who will accept the proposed policy and at what rates. The suggestion that he obtain a certain form of insurance may appeal strongly to a new or prospective client, but if the proposal cannot be underwritten little credit will result to the broker. A broker must have a working knowledge of what the market offers and at what cost.

Progressive Underwriting.—However, it must not be presumed that the broker should limit his efforts to obtaining conditions or rates which he knows are readily granted. If he honestly believes that his client needs a form of protection not heretofore offered by underwriters, or if his client demands a certain form

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of protection which he believes can be consistently underwritten, it is his duty as an intermediary to use his efforts to obtain such form of policy. Much of the progress which has been made in the broadening of the marine insurance contract is due to the honest efforts of experienced brokers to obtain better protection for their clients. At this point, however, the broker is treading on dangerous ground. In his desire to gain business he may advocate the granting of conditions, which on sober second thought he may realize are fraught with peril to the careless underwriter. Nevertheless his desire for business may warp his judgment, and he will seek to obtain these unwise insurance conditions and perhaps succeed. If the underwriter is induced to grant weak conditions and consequently suffers heavy losses he will be apt to consider with undue caution future proposals from this source. To be sure, competition often compels a broker to ask an underwriter to grant conditions which he believes to be unwise, but if in such cases the broker will take the trouble to explain that competition is causing him to plead against his better judgment, the underwriter will be more disposed to treat with him and cannot later feel that the broker has taken an unfair advantage.

The Broker's Duty Twofold.—It may be thought that an underwriter should be competent to take care of himself and that if he does poor underwriting in the granting of unwise conditions and inadequate rates he alone is responsible. This is not altogether the case. It frequently happens that a broker controlling a large volume of business, will obtain a powerful position in the underwriting market and underwriters will seek his favor, in order to obtain a share of the business which he controls. When such a condition exists a broker, in order to obtain from a prospective client an account controlled by another broker, may offer to furnish a policy containing conditions which appeal to the client, but which the broker knows are not in harmony with sound underwriting. Having obtained the account under such promise, he will use his power indirectly it may be, but nevertheless effectively, to induce one or more underwriters to grant the required conditions. The broker owes a duty not only to his client but also to the underwriter to foster and conserve in every practicable way the stability of the latter in order that the

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security behind the policy may continue to be of the best. Brokers should realize that the success of the insurance companies alone makes possible the continued existence of their own business. In this country, the broker has no capital at risk which will be affected by the success or failure of the underwriter. Nevertheless, it is just as much his duty to refrain from asking unwise insurance conditions of underwriters as it is to see that his client obtains the fullest measure of protection consistent with safe underwriting. The broker should realize that in the last analysis, his interest and that of the underwriter are one.

The Broker's Attitude Toward Losses.—It is not alone in the placing of risks that the broker has this twofold duty. The same obligation exists with respect to the collection of losses. Notwithstanding the efforts which the broker may make to explain to the assured the measure of protection which he is receiving under the policy of insurance in regard to perils covered and to average conditions granted, some assureds feel that in the event of loss the underwriter should recompense them no matter what the nature or extent of the damage suffered. Accordingly they will present a claim to the broker. In cases where the facts presented indicate clearly that no liability exists on the part of the underwriter, the claim should never reach him. The broker should return it to the assured and explain to him why no liability rests upon the underwriter. If, on the other hand, there is a reasonable doubt as to the question of liability, or if the facts as presented are unusual and give rise to the question as to whether as a matter of equity rather than as a matter of legal right, the assured may be entitled to a hearing with respect to the claim, then the broker should present the case to the underwriter, pleading the cause of his client, but leaving the question of settlement to the judgment of the underwriter. The broker's position is not always an easy one and in many cases no little degree of tact is required in order to amicably satisfy both assured and assurer. His position is often that of a buffer taking up the blows delivered by both assured and underwriter.

The Broker Arranges Settlement of Losses.—The duty of a broker does not end, however, with the presentation of claim for loss. Sometimes he actually makes an adjustment of the loss, merely presenting the completed claim for the approval of and

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settlement by the underwriters. Some underwriters prefer to make their own adjustments and in such cases the broker collects the necessary documents in order to prove the claim, presenting these to the underwriter for his consideration. The underwriter then makes up the adjustment which is presented to the broker for the approval of his client before payment is made. It is the duty of the broker to carefully scrutinize this statement of loss, and to make certain that his client is receiving the full measure of recovery afforded by the policy. Having approved the adjustment and, if necessary, obtained the assent of the assured to it, and having arranged for the execution of whatever documents of assignment may be required by the underwriter, he collects the loss and makes remittance to his client.

The Broker's Services in General Average.—If the casualty in which the property is involved results in a general average sacrifice, the broker makes the necessary arrangements for the release of the goods, advises with respect to the general average bond, and obtains the general average guarantee from the underwriters. The amount of time and trouble expended in the collection of losses is sometimes very great, especially when intricate questions of liability arise. Some brokers charge a commission for the collection of losses, while others perform this labor gratis, considering that this is part of the service they have agreed to give their client. In any event, unlike the placing commission which is paid by the underwriter, the collecting commission is paid by the assured, either as a separate item, or if the loss is directly paid under order of the assured to the broker, by a deduction in the remittance of the payment of loss to the assured.

Commissions.—The question of commission should be the last thought of the broker. It is true that this is the source of his income, yet the main consideration for the broker is to give the best quality of service to his clients and to so conduct his operations with the underwriters that both client and underwriter will wish to do business with him again. If the broker can successfully meet this twofold obligation, the matter of commission will take care of itself and his financial success will be assured. To the conscientious and skillful broker the business is very lucrative. In the brokerage field a good reputation spreads quite as quickly as does a bad one, and clients will come to the broker

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who consistently furnishes the best service and who because of his relations with the underwriters can furnish policies backed by the best security which the market affords.

Broker Does Not Guarantee Payment of Premiums.—In this country the broker in the ordinary case does not guarantee the solvency of his client, that is, he is not a guarantor for the collection of the premiums. It is his duty, however, to use all reasonable efforts to make collection of the premium, but if his client becomes financially embarrassed and fails to pay, this does not create any financial obligation on the part of the broker to the underwriter. It sometimes is the case, however, that an underwriter may be unwilling to write an account because of lack of faith in the financial standing of the assured, in which event the broker may guarantee the payment of the premiums. Such agreement should not be left to inference, but should be expressly agreed to in writing by the broker. While there is no financial obligation on the part of the broker in the ordinary case with respect to the payment of premium, there is a moral obligation on his part not to offer business to an underwriter unless he is reasonably certain of the financial integrity of his client. Furthermore the broker's own reputation with the underwriter is in a large measure determined by the character of business offered. If he constantly offers businss where the moral hazard is bad, or business which proves unprofitable because of careless packing or handling of goods or of lack of skill in the operation of vessels he will soon find that the first-class market is closed to him and that all risks offered by him are looked upon with suspicion. A broker's reputation will depend in no small measure on the reputation of his clients.

The Broker as an Underwriter.—Within recent years a new situation has developed in the marine underwriting field, where brokers have entered on the dual career of broker and underwriter. That is, large brokerage firms or corporations, which formerly confined their operations solely to the placing of risks and the adjusting of losses, have opened separate departments for the underwriting of risks, receiving appointment as general or special agents of important marine insurance companies. In some cases, the underwriting is conducted under the same name as the brokerage portion of the business, in others, a separate

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firm or corporation is organized for the conduct of the underwriting section of the business. While there is an apparent separation of interest there is nevertheless a unity of control. If there is a complete separation between the two branches of the business there would seem to be no sufficient reason why a broker should not extend his activities to the underwriting field. The principal difficulty in the situation is one which cannot be removed; that is, human nature. It is a difficult matter for two phases of a business which, in a measure are opposed to each other in their method of approaching the problems of that business, to be conducted by a single person or by the same group of persons without the two methods of approach becoming involved.

A Difficult Relation.—The two chief dangers in this complicated system are first, that the aid of the underwriting branch of the business will be given to the brokerage branch in order to create a lead. That is, the underwriting branch may grant conditions and rates which are necessary for the obtaining of a new account, and if the companies represented are of sufficient reputation, other underwriters may follow the lead. In the second place, a broker acting as an underwriter obtains valuable information regarding the business connections of other brokers. The underwriter occupies a confidential relation both to broker and to assured, and if a broker acting as underwriter abuses this confidential relation the result will be that other brokers will not avail of the underwriting facilities, except in case of urgent necessity, and there will be a consequent loss of business to the insurance company which has entrusted its underwriting agency to a broker. From the company standpoint, however, this may possibly be offset by a consideration of the fact that a large brokerage concern controlling a great amount of business may bring to the company a volume of premium income which it might not otherwise obtain. While the entrance of the broker into the underwriting field has, up to the present time, revealed no considerable abuse of the dual relation, it is a condition that is fraught with dangerous possibilities and one which in the hands of unscrupulous persons, might lead to serious consequences. On principle, a complete separation of broker and underwriter will do most to foster the growth of the marine

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market and will leave competition free and open with resultant benefit to the insuring public.

Brokers in England.—Because of the intimate connection between the English and American marine insurance markets, it is interesting to note the different method of conducting brokerage operations in England. There the broker occupies a position which, to a certain extent, is fiduciary in its nature. It has already been pointed out that the ordinary form of the English policy by its terms confesses payment of premium. The Marine Insurance Act of Great Britain provides that where a marine policy effected by a broker on behalf of the assured acknowledges receipt of the premium, that such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and the broker. This seems to free the assured from any liability for premium under such a policy. Another section of the same Act provides that when a policy is placed by a broker, the broker is responsible to the underwriter for the premium, but he has a lien on the policy for the premium plus his charges for effecting the insurance. The system in use in Great Britain is for the broker to make monthly remittances to the underwriters for premiums due, the broker receiving the policies and retaining them until payment is made by the assured. The assured is also expected to make monthly remittances to the broker, ten per-cent discount being allowed by the underwriter to the broker and by him in turn to the assured if payments are made by the tenth of the month. In addition to this, the underwriter allows five percent to the broker as a placing commission.

Losses and Return Premiums.—While the payment of premium is in England a matter that rests between the underwriter and the broker, the underwriter is directly responsible to the assured for the payment of losses and for the payment of return premiums. The broker is thus placed in the peculiar position of being liable for the premium, but in the event of non-payment by the assured he is not able to lay claim to a possible loss out of which he might reimburse himself for the premium paid. However, if the broker retains possession of the policies as is his right under the law, until the premium is paid, he will be in the position of preventing the assured from collecting a loss or

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a return premium owing to the non-ability of the latter to produce the policy. The broker's position is, therefore, not quite as precarious as the bare statement of the rule would seem to indicate. Furthermore the lien which the broker retains by the possession of the policy does not apply to the particular policy alone, but to any other unpaid balance arising out of an insurance account between the broker and his client.

Current Accounts.—As a matter of practice, however, the broker usually attends to the collection of return premiums and losses and runs a credit and debit account with his client, charging the account with premiums due and crediting it with return premiums and losses recovered, the debit or credit balance being settled from time to time by the assured or the broker as the balance may make necessary. This bare outline of brokerage practice in England will serve to indicate the more responsible position of the broker in the English marine insurance market as compared with his American contemporary.

Mutual Companies.—In connection with the placing of insurance directly with the underwriter by the assured, the mutual company offers perhaps the best illustration, though this direct method is by no means confined to mutual companies. The mutual idea, however, was originally adopted in order that merchants and shipowners might reduce the cost of insurance by reducing the overhead charges involved in the placing of risks. The mutual idea was not new when the first mutual companies were organized in this country. The original theory of insurance in England was mutual in its conception, merchants and shipowners meeting in the coffee houses and each accepting a share in the ventures of their fellows. The novel feature in the development of the mutual theory in this country was the plan of conducting mutual underwriting through a corporation. In the second quarter of the nineteenth century the idea took deep root in the United States and many mutual insurance companies were chartered. As is often the case with ideas looking to the reduction of the cost of commodities or of service, the theory is advanced by men who are visionaries rather than experienced business men with the inevitable result that the theory in its application is stripped of sound business principles. This explains in part the meteoric rise of the mutual idea in the country

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and its equally rapid decline. Men who were successful in their own lines of merchandising or of ship operating were not necessarily fitted to be successful underwriters and many of these companies conducted by insurance amateurs inevitably went into liquidation.

Theory Sound in Principle.—That the theory is, however, sound in principle and when applied on conservative business lines leads to a safe and desirable method of providing insurance protection, is clearly evidenced by the successful operation of a number of these companies through a long period of years. It is true that all but one of the mutual marine companies has now been liquidated, but this is owing to the change of business methods in the country, rather than to any fault in the system. The continued success and prosperity of the remaining company, standing as it does in the very forefront of the American marine market, is the best evidence of the fact that even in a changed business world, the theory of conducting insurance for the benefit of the policy holder rather than for the profit of stockholders makes a strong appeal. Furthermore, a company responsible to its policy holders alone, occupies a position of independence in the marine market, which has a salutary effect in preventing rate increases made, not because of the increased cost of insurance, but rather to bring added profit to invested capital.

Method of Organization.—The mutual system then being an important element in the American marine market, a brief outline of its method of organization will be of interest. The original capital with which the mutual companies began business was furnished by the merchants and shipowners who organized them. These men did not advance cash but gave notes to the companies which were negotiated and furnished the working capital. As the merchant insured risks with his company and the premiums written exhausted the amount of the original note, a new one was given adequate to cover the premium on risks which the merchant or shipowner anticipated insuring during the following six months. When a sufficient amount of these original notes were in hand to permit the commencement of business, the company was organized by the election of trustees charged with the stewardship of the funds of the organization. These trustees in turn elected administrative officers who were charged with the operation of the enterprise. On the skill and ability of these

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men the success or failure of the company depended. It is apparent that in a hazardous enterprise such as marine underwriting, men operating a mutual company whose judgment of risks would be swayed by personal consideration of the individual member of the company offering the risk, could quickly wreck the enterprise. The success of these companies rested in part on the selection of the better risks which the merchants had to offer, less desirable ones being placed by them in the open market.

Distribution of Earnings. Scrip Certificates.—After a surplus commensurate with the size of the enterprise had been accumulated, the question of the division of profits among the policy holders became of interest. It was not deemed prudent that the earnings of these organizations should be distributed as this would immediately impair the security behind the policies issued, so the plan of dividing the profits into shares but of temporarily withholding payment thereof was adopted. This was accomplished in the following manner. When the profits of the calendar year were determined, the trustees of the company decided what proportion should be turned back to the assured. This amount being determined, was usually expressed as a fixed percentage of the net terminated premiums of the preceding year. The share to which each policy holder was entitled was determined by applying this percentage rate to the net terminated premiums of the particular assured. Net terminated premiums represent those on risks which have run off by the last day of the preceding year, less returns of premiums and cancellations. For the amount of profits so determined a so-called Scrip certificate was issued which was signed by the President and the Secretary of the Company. It certified that the assured, his heirs, administrators or assigns were entitled to so many dollars of the earnings or profits of the said insurance company, the certificate to be redeemable at the pleasure of the trustees of the company, and to bear interest in the interim at a rate not to exceed, say six percent. It was further recited in the certificate that under certain circumstances, the certificates could be recalled and cancelled in whole or in part. These scrip certificates found a ready sale in the security market, their value and salability depending, of course, on the financial standing of the company issuing them. These documents thus became a liability of the

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company, except in so far as they could be reduced or cancelled if the company became financially embarrassed, but the company retained as working capital the profits represented by these certificates until they were redeemed.

Redemption of Scrip.—After several annual issues of these scrip certificates had been made, it was customary for the trustees of the company to order the redemption of the oldest issue, the certificates being surrendered to the company in exchange for cash equal to their face value. From the time the annual redemption of certificates commenced, the new issue of scrip which became a liability of the company would be offset in part at least by the redemption of a previous issue which thus ceased to be a liability of the company. If the volume of business of a company varied little from year to year and the underwriting profits were moderately uniform, it is obvious that the assets and liabilities of a mutual company would vary little from year to year. If, however, the business showed a constant increase from year to year and the percentage of profit remained uniform, the assets of a company would grow, since the new issue of scrip would naturally be larger than the issue redeemed. Furthermore, prudence would require that, with the expansion of business, there be a corresponding addition to the safety fund known as surplus or undivided profits.

Policy Holders not Subject to Assessment.—The policy holders in a mutual marine company are not subject to assessment if the company meets with reverses, their sole loss in such case being the wiping out of these divided but undistributed profits represented by the scrip certificates. Of course, if the policy holder has transferred his scrip certificate such loss would fall on the present holder of the security. The profits of a mutual company, it will be observed, are not divided on the basis of the individual policy, but on the results of the entire transactions of the company. The company reserves the right to withhold the issuance of scrip to any policy holder who is in default in the payment of premiums, so that this method of dividing profits furnishes in this respect an added protection to the company. Mutual companies are, of course, subject to the same state control as are the stock companies, so that any danger of misfeasance on the part of trustee or officer is reduced to a minimum.

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CHAPTER 22

OFFICE ORGANIZATION. THE ANNUAL STATEMENT

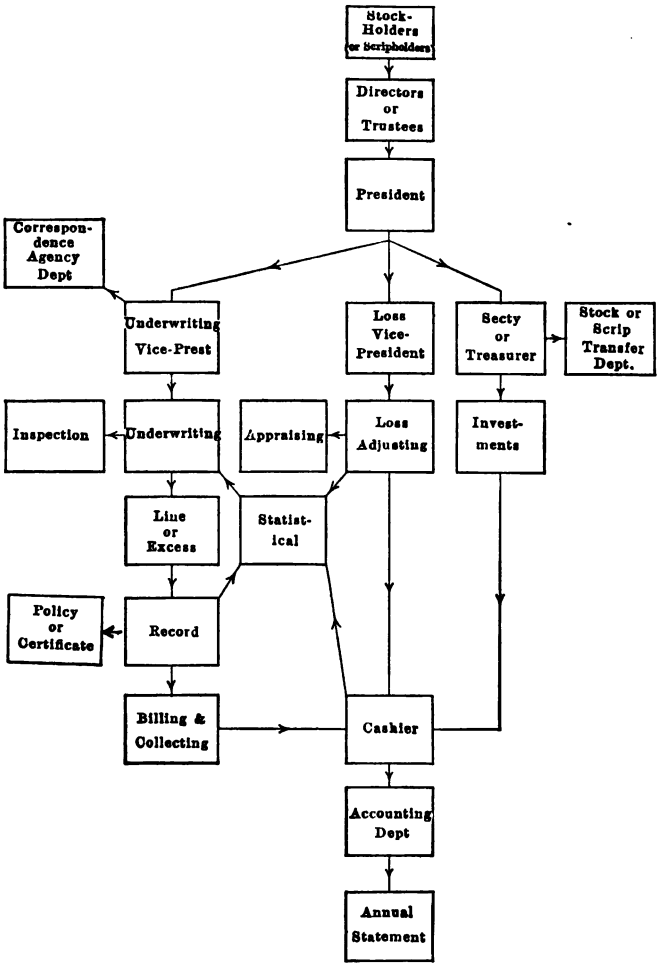
Departmental Organization.—Young men in entering a marine insurance office to begin their chosen life work are quite apt, after a short preliminary training, to be placed in some department where they may remain for several years. They become expert in the work of that one department but too often lose sight of the relation which their particular work bears to the business as a whole. They thus become mere cogs in a machine, rather than men who see their particular work as an essential and integral part of the business as a whole. It would therefore seem pertinent to sketch in outline at least the organization of a marine underwriting office, so that those engaged in the business, who are for the present working in what seems to be a rut, may receive an insight into the work of each particular department, and thus be able by diligent study to prepare themselves for more important responsibilities. The accompanying chart will give some idea of the organization of a marine insurance company, showing the relation of the various departments.

Purpose of Records.—The names by which individual departments are called in this discussion may not be those used in every insurance office. However, the duties described are the essential steps in the passage of a risk through the office from the time it is accepted by the underwriter, until in the event of loss, claim is made and paid under the policy of insurance. The records prepared by these departments are necessary to properly account for particular phases of the business, and are so coördinated as to show the operating results of the company as a whole, as set forth in the annual reports which must be made to the insurance departments of the various states.

Organization Divided into Three Sections.—The conduct of a marine insurance office may be divided into three executive functions, those of underwriting, loss adjusting and accounting and financial management. Controlling these three executive

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divisions are the officers of the company, each specializing in and charged with the conduct of some particular part of the company's activities, these men being in turn responsible



through the chief executive to the trustees or directors of the company.

Underwriting Department.—Risks when presented to the company by a broker or assured are considered by one of

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the underwriting officers or by some member of the staff, known as an underwriter, who is specially authorized to consider risks and to make contracts of insurance with the assured. However, before the underwriter can intelligently consider the risk he must have particulars of the carrying vessel, its location and its present condition. This information he may obtain for himself by consulting the classification books and the maritime lists, but it is preferable to have a separate department for this work known as the inspection department.

Inspection Department.—The inspection department is usually in charge of men who have had actual sea experience or who have received their preliminary training as ship or engine constructors. Associated with them are assistants who mark at the foot of the application from the classification books or from the private records of the company particulars of the vessel submitted. The trained inspectors also advise the underwriters with respect to the merits of particular vessels and when necessary make special surveys of vessels when doubt exists as to their fitness for the proposed voyage or cargo. Records of casualties are also kept in this department so that notice thereof may be given to the underwriters who otherwise might unwittingly accept lines on a vessel already in trouble.

Binders.—Receiving the application from the inspection department with the details of the vessel noted thereon, the underwriter either accepts or declines the risk. If the risk is declined or if a rate is quoted which is not immediately accepted by the broker or assured, the application is known as an inquiry and is placed on file for future reference. If the rate named is acceptable the risk is bound and the binding application or binder starts on its way through the books of the Company. The underwriting officers and the underwriters also negotiate for and draw up forms of applications for open policies which when mutually acceptable to the company and the assured become the basis from which the formal policy is written.

Line or Excess Department.—From the underwriters the binder passes to the line or excess department where the risk is entered under the name of the carrying vessel. On the books or cards of this department all risks are catalogued by separate vessels and distinct voyages of each vessel. These records serve

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a twofold purpose. First by them the total liability of the company on any individual risk is shown, so that in the event of casualty it is immediately known whether or not the company is interested and to what extent, and secondly and of more importance, by these records the liability of the company is controlled. If the clerks making these records find that the underwriters have assumed a larger amount than the predetermined retention of the company, the matter is reported at once by them to the head of their department who may be charged with the procuring of reinsurance, or the report may be made to a separate department, known as the reinsurance department. The head of this department on receiving notice of the overline, immediately endeavors to procure reinsurance to reduce the line down to the company's ordinary retention, if his general instructions cover the case, or if not, he submits the particulars to one of the officers for special instructions. In an office where several men are charged with the underwriting these line or excess books form a ready means of learning whether the company's underwriting capacity on a named vessel has been exhausted. The need of promptness and accuracy will be apparent in the conduct of this department. From these books declarations of reinsurance under excess reinsurance contracts are made.

Customer's Records.—Having been recorded on the line books of the company the binder passes to the entry or recording department, where an entry is made under the name of the assured and the premium charged against the particular account. The clerks making entries in this way should have access to the office copy of the open policy so that, in addition to making a proper record of the risk, they may confirm that the risk as entered is in agreement with the terms and conditions of the policy. This puts upon them a considerable burden but offers to the entry clerk an unusual opportunity of becoming familiar with the terms and conditions under which various commodities are insured. In other offices the binders are entered on sheets in chronological order and posted to another record under the name of the assured. Both of these operations may be performed in one operation by the use of modern mechanical accounting machines used in connection with a loose-leaf system. Whatever the method of recording adopted in this department the object

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in view is to charge the premium against the individual customer's account. If the marine office is merely an agency, particulars of the customer's accounts will be furnished in more or less detail to the home office and from these the agent's balances are calculated.

Certificate and Policy Departments.—If a certificate of the insurance is desired this document is drawn by the certificate clerk either before or after the recording of the risk. If the binder be a so-called special insurance as distinguished from a declaration under a floating policy, it may go to a separate department, known as the policy department, the chief duty of which is the writing of the policies of insurance. These documents as well as the certificates of insurance are usually produced on the typewriter, the head of the department being charged with the responsibility of seeing that the documents as written are in accordance with the terms of the binder. The larger part of the policy department's work is the writing of the open contracts issued by the company and the special policies issued on hull risks, so that men in this department have an excellent opportunity of becoming familiar with the terms and conditions applying to various kinds of risks.

Collection Department.—At the end of each month the billing or collection department goes over the record of each assured and prepares a statement of the account for transmission to the assured. The detail of these statements is usually prepared in the recording department by the carbon process, the customer's records as a rule being in the loose-leaf form and typewritten. The collection department is charged with the duty of collecting the premiums due to the company and of following up delinquents. The premiums charged are transferred each month to the customer's ledgers where a record is kept of premiums charged, premiums collected, return premiums and cancellations allowed and return premiums and cancellations paid. When the assured remits for the premiums charged, the checks are delivered to the cashier who after properly crediting the various accounts deposits the money in the bank. This is, of course, the principal source of income of a marine insurance company. The second and less important source of income is that received from invested assets, that is dividends, interest or rents.

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Participating Companies.—This in brief indicates the various steps in the passage of a risk through an insurance office. If the company is one which shares its business with others through participating reinsurance, or if the office is that of a firm representing several companies, each of which obtains a definite share of the risks accepted, detailed records of these risks will be made by some multigraph system, the share of each participating company being noted at the foot of one of the copies or bordereaux as they are known. These are mailed to the main offices of the various participating companies who charge the agency with the premiums due and credit them from time to time as remittances are received.

Loss Department.—The loss department of an insurance company is operated for the purpose of adjusting and approving for payment or rejecting claims made on the company for loss or damage. It was observed that the inspection department kept a record of casualties in order that the underwriters might be informed of the present conditions of vessels offered for insurance. The information here recorded is again noted by the loss department, the amount at risk in the particular casualty being obtained from the line books and shown in connection with the record of the casualty. As soon as the facts of the particular disaster are known with a reasonable degree of accuracy, an estimate of the probable amount for which the company will have to respond is noted against the record of the casualty and this amount is immediately transferred to other records as an estimated liability of the company. This liability remains until after a final adjustment, the loss is actually paid, or until after the procurement of additional facts it is determined that no claim will be made upon the company.

Appraisers.—The loss department of a marine insurance company usually consists of two sections. The one is a field force and ordinarily consists of men, expert in the appraisal of damaged goods. They examine damaged property and endeavor to make an amicable adjustment of the loss without resorting to the expense and uncertainty of a sale at public auction. If the question of ship's liability for the loss is involved these appraisers usually call into consultation the expert ship men from the underwriter's inspection department. If the case is one of hull

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damage these ship experts take the place of the appraisers and make a survey of the damage and estimate the cost of restoring the vessel to its former condition.

Loss Adjusters.—The second section of a loss department is concerned with the actual adjustment of loss. When claims are presented, the loss adjusters obtain the necessary documents and proofs of loss, hold interviews with the assured, and after procuring the essential facts in the case, prepare the statement of the loss and submit it for the approval of the assured. Usually the men in a loss department specialize in certain forms of adjustments, one man adjusting particular average claims on cargoes, another such claims on hull, a third total loss claims while at least one man will be expert in the subject of general average, examining and criticizing or approving these statements as submitted by the general average adjusters. The statement of loss having been made to the satisfaction of underwriter and assured it is approved for payment by the chief loss adjuster of the company, who is usually one of the executive officers. The statement is then presented to the cashier's department for payment.

Financial Department.—The third general division of a marine insurance company, of which the cashiers are a part, is known as the financial department. This department is charged with the conduct of the financial books of the company, and all the operations of the company both underwriting and adjusting, as has been indicated, finally reach this department to be entered on the financial ledgers of the company. The department is also charged with the custody of the funds and investments of the company, the responsibility resting on the Secretary-Treasurer of the company who is directly answerable to the chief executive of the company and through him to the trustees or directors.

Cashier's Department.—The cashier's department is charged with the duty of recording the detail of all the receipts and disbursements of the company, in such manner that they can be transferred in summarized form to the books of the accounting department. While the detail in this department is considerable it is simplified by keeping separate records of income and disbursement items and by segregating the same into various subclassifications. By the use of loose-leaf devices this information

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may be so tabulated as to be readily available for the use of the accounting department.

Transfer Department.—A separate section of the financial department may be charged with keeping the records of the the capital stock of the company or of the outstanding scrip if the company be conducted on the mutual plan. Here transfers of the ownership of stock or scrip are made, the old certificates being cancelled and new ones issued in their place. Here also are made the disbursements of the earnings of the company in the form of dividends on capital stock, or in the payment of interest on scrip or its redemption.

Accounting Department.—The accounting department receiving day by day in summarized form the results of the financial transactions conducted by the cashiers, transfers them to the financial ledger, which as a matter of convenience is usually kept in such form that the results obtained will meet the requirements of the statements which must be furnished to the various state insurance departments. This financial ledger is usually under the immediate control of the auditor of the company, whose position is one of considerable responsibility. Not only is he charged with the auditing of the various accounts of the company, but he is also required to be familiar with the laws of the various states in which the company is licensed to do business so that the annual statements made may conform strictly to the special requirements of the particular state. Furthermore, the question of taxation comes within his duties and the various problems created by the multiplicity of tax laws, city, state and national must be understood and mastered by him.

Agency Department.—There will usually be found in the office of a marine insurance company a department charged with the conduct of the agencies of the company. This department is under the immediate supervision of one of the officers. It may also conduct such business as is presented to the company not in person but through the mail.

Statistical Department.—Another department, that of statistics, is from the underwriting viewpoint the most vital department in the office, for here are produced the figures which show precisely the profit or loss on the various accounts or on the various classes of risks which the company is insuring. It will be

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observed that marine underwriting is not strictly scientific in the sense that life insurance is. In this latter branch of insurance practice there has been worked out in the mortality tables a predetermined and accurate table of the results which may be expected in the insurance of lives. The life underwriter is dealing with conditions that are stable and within reasonable limits subject to little fluctuation, perhaps the only undetermined factors in his problem being the possibility of unusually heavy mortality through war, pestilence or some cataclysm involving a large portion of the territory in which he operates. But these unusual conditions are so rare as to be almost negligible.

Marine Insurance Not an Exact Science.—The marine underwriter on the other hand is dealing with risks which are not effected by the ordinary stable conditions that are encountered every day, but with those frequent but nevertheless disturbed conditions which are encountered on the seas. No chart or table can be devised which will show to a nicety how many days will be clear and how many stormy or which will measure the severity and direction of these storms. The marine underwriter is dealing with condition over which the veil of the future is drawn and he must rely on past conditions in order to arrive at his conclusions of what probably will happen in the future. Furthermore, owing to the unusual physical conditions to which marine risks are subjected, the experience upon which the underwriter depends must extend over a considerable period of time, ten years perhaps being the shortest period from which reasonably accurate forecasts can be made of what the future has in store. Years of great disaster seem to run in cycles and after a long period of relative freedom from excessive losses, a period will follow in which disaster follows on disaster with incredible rapidity causing unusual and terribly costly results to marine underwriters.

Preparation of Statistics.—The work then of this statistical department is to so tabulate the results of the company's business, that from the results shown over a considerable period of years the underwriter can see what the past has revealed and make some forecast of what the future will be. To this end there must flow into this department full particulars of each and every risk accepted by the company together with particulars of return premiums and cancellations. From the loss department informa-

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tion must be gathered of all losses paid, showing the cause of loss and other necessary information. This department must also furnish for statistical purposes particulars of recoveries made in the nature of salvage so that the net loss results may be obtained. A comparison of the net premiums received and of the net losses paid will indicate the percentage of profit or loss on the bare underwriting of the company, whether this be looked upon from the viewpoint of individual assured, kind of goods, routes of trade or from any other angle from which it is desired to analyze the business.

Deductions.—The bare underwriting result is now further reduced by a percentage of net premium income calculated to cover overhead charges for conducting the business including items of salary, office rent, stationery, taxes, brokerage and various other expenses which are essential to the conduct of a going concern. In this manner the final result of underwriting operations is arrived at. It will have been observed that no notice has been taken of the cost of reinsurance which a company procures for its own protection nor of the recoveries made under such reinsurance. The reason for this is that the underwriter seeks information as to the experience of the business which he writes compared with the losses which he pays after which is deducted the expense of doing business. The reinsurance which he procures does not alter this experience. While it may, it is true, increase his net profits if reinsurance recoveries exceed reinsurance premium payments, on the other hand, if reinsurance premium payments exceed the recoveries the net profits of the business will be reduced. It will then be apparent that in determining experience, reinsurance is an item which can be safely disregarded. Consideration of reinsurance figures over a long period of years will indicate whether or not it has been profitable for the company to reinsure and may aid in drawing conclusions as to whether or not the company could prudently retain larger lines than has been the practice. As a matter of pure experience on the outcome of individual classes of business, however, these figures are of little importance. It will, of course, be understood, that in this connection it would be entirely proper in the case of share reinsurance, where a company under treaty turns over to other underwriters a share of all or of a portion of its business, to con-

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sider in statistical figures only the net retention and the net loss paid, as the expense of doing business must be paid out of the net and not the gross premium. In such cases the original company is merely acting as a distributor of the risk. The reinsurance, which may be disregarded, is special or excess reinsurance which the company may place from time to time to reduce its liability.

Statistics Must be Accurate.—It is quite true that the annual income and expense statement of the company will indicate whether operations have been profitable or otherwise, but this statement will not point out the strong or the weak points in the underwriting operations of the organization. The statistical department alone can do this by its system of analysis, and the value of the results thus produced will depend largely on the accuracy of the figures furnished and the ability by analysis to sift thoroughly the case in question in order to learn the exact cause of an unprofitable outturn of any particular class of risk. The statistical department is the laboratory of the insurance company.

Annual Statement.—The office routine does not end here. One further step is necessary. The company must make a report of its operations in detail to the state in which it is incorporated and to every other state in which it has been licensed to do business. The state reports have been partially standardized by the various insurance departments, so that the report made to the state in which the company is domiciled will serve as the basis of the report made to each other state. The principal difference in the reports is in the requirements for the make up of reinsurance deductions from liabilities and in that section of the statement referring solely to operations in the particular state for which the report is intended. The preparation of these reports nevertheless requires no little degree of skill as the insurance laws of the various states are not uniform, and a thorough knowledge of them is requisite in order that the information entered under the various headings may be reported in accordance with the requirements of the laws of the particular state in question.

Income and Disbursements.—The purpose of the annual statement to the insurance department is to prepare a public record which will show the transactions of the insurance company in such detail that the insuring public, by a perusal and analysis

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of the figures, may determine not only the financial stability of the organization, but also gain a fair idea whether or not the company is being operated in a conservative manner. To this end various statements are included, the first showing the income and disbursement account of the company. The theory underlying this section of the report is that the assets on December 31st of the previous year plus the income actually received during the year minus the disbursements actually made during the same period will equal the assets at the end of the year.

Assets and Liabilities.—Another section of the report shows the assets and liabilities of the company, sufficient detail being given to indicate the nature of the securities or property in which the assets of the company are invested. The liabilities of the company are also shown in sufficient detail to permit careful analysis to be made of the statement. Among the items of liabilities will be found the reserve set aside for the payment of estimated and unadjusted losses, an item of considerable importance in the case of marine companies, since, owing to the far-reaching scope of marine insurance considerable time often elapses between the happening of a loss and the payment of the claim. Upon the sufficiency of this reserve depends in large measure the stability of the company. Another liability item of considerable size is the unterminated premium reserve. The last item under the liabilities will be a balancing figure called surplus. This item added to the capital stock or the amount of outstanding scrip, if the company be mutual, will indicate the surplus as respects the policy holders. The assets as shown in this section will equal the balance arrived at in the statement of income and disbursements, by means of adding to the assets on hand at the beginning of the year, the total income actually received during the current year and deducting from the total thus obtained the total disbursements actually made during the same period. There is added to this statement of ledger assets, as it is called, certain other items called non-ledger assets which represent credits due to the company but not yet paid, such as accrued interest and rents, the difference between the book and market value of securities and similar items. From the total assets thus obtained are deducted other items such as company stock owned, outstanding bills overdue, unsecured loans, book value of securities

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over market value and similar items, the net result representing the admitted assets of the company.

Underwriting and Investment Exhibit.—A number of general interrogatories, in relation to the risks underwritten by the company and the nature of the premiums received follow, together with a statement of the business actually written in the state to which the report is being made. There is then presented what is called the underwriting and investment exhibit, which is in effect, a profit and loss statement showing in detail the increase or decrease in the surplus of the company during the year. In this statement the net increase or decrease in surplus is determined by considering.

1. Gain or loss from underwriting.
2. Gain or loss from investments.
3. Gain or loss from miscellaneous causes.

From this statement is indicated the percentage of losses incurred to premium earned, investment expenses incurred to interest and rents earned, and also the percentage of general expenses incurred to income received.

Schedules.—The remainder of the state report consists of schedules showing in detail the investments of the company at the end of the year and the income therefrom, together with sales and purchases of same during the year, the bank balances of the company and the interest received thereon and similar details of asset items appearing in the statement of assets as total figures only. However, the public is not altogether dependent on these state reports for its information as to the stability of insurance companies. The state department not only carefully peruses and analyzes the statements furnished, but from time to time makes thorough individual examinations of the companies, verifying the accuracy of all the items entered in the reports, and the truth of any statements made therein. Furthermore the question of loss and premium reserves is a particular object of attention and if necessary the company is required to increase these liabilities.

Publicity in Insurance.—Any detailed discussion of the accounting problems involved in the conduct of an insurance company is not within the province of this book, nevertheless the annual statements and the special reports to the insurance

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departments are well worthy of study in that they reveal to the assured and to the broker, as well as to the underwriter who may be seeking reinsurance, an accurate idea of the stability of the various companies and of the security back of the policies which they issue. The modern idea of publicity so pervades the business of insurance and the standing of the companies is so clearly set forth in these records, which are open to the public, that there would seem to be no reason why an assured who cares to inform himself should not avoid the acceptance of insurance in companies of doubtful stability.

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APPENDIX A

Standard Application Form Used in Placing Special Risks on Cargo

CERTIFICATES REQUIRED
(Indicate by check)

Original
Duplicate
Triplicate

CARGO APPLICATION
SPECIAL RISK
Underwriters and Brokers Emergency Agreement Form

Provisional } (Indicate
Definite } by check)

(Space reserved for Company's use)

Policy No......

Certificate No......

Application for Insurance is hereby made by ..... *as Brokers,*

In name of ....., *account of whom it may concern.*

Loss, if any, payable to ..... *or order.*

For the amount stated below, on .....

Valued at .....

Per .....

At and from .....
(Meaning point where insurance begins)

.....

To .....
(Meaning point where insurance ends)

.....

Subject to printed clauses on the back hereof (unless otherwise provided hereon) and other Special Conditions as follows:

.....

.....

.....

.....

.....

.....

(Space reserved for calculation of premium)

Amount under deck $ ..... *Rate* ..... *per cent.*

Amount on deck $ ..... *Rate* ..... *per cent.*

Brokerage ..... *per cent.*

New York, ... *191* ....

Binding ..... *for Company*

Binding ..... *for Applicant*

(*Front side*)

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Appendix A continued

1. Warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof or of any attempt thereat, (*piracy excepted*), and also from all consequences of hostilities or war-like operations, whether before or after declaration of war.

2. Warranted free of loss or damage caused by strikers, locked out workmen or persons taking part in labor disturbances or riots or civil commotions.

3. General Average and Salvage Charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

4 Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel or voyage.

5. Including (subject to the terms of the Policy) all risks covered by this Policy from shippers or Manufacturers' warehouse until on board the vessel, during transhipment if any, and from the vessel, whilst on quays, wharves or in sheds during the ordinary course of transit until safely deposited in consignees' or other warehouse at destination named in Policy, except that in respect to shipments to the River Plate, the risks under this insurance shall cease upon arrival at any Shed (transit or otherwise), Store, Custom House or Warehouse, or upon the expiry of ten (10) days, subsequent to landing, whichever may first occur

6. Including risk of craft, raft and/or lighter to and from the vessel. Each craft, raft, and/or lighter to be deemed a separate insurance. The Assured are not to be prejudiced by any agreement exempting lightermen from liability.

7. Including all liberties as per contract of affreightment. The Assured are not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bills of Lading and/or Charter Party. The seaworthiness of the vessel as between the Assured and the Assurers is hereby admitted.

8. Warranted not to cover the interest of any partnership, corporation, association or person, insurance for whose account would be contrary to the Trading with the Enemy Acts or other statutes or prohibitions of the United States and/or British Governments.

(Reverse side of standard application form)

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APPENDIX B

Standard Form Used in Requesting Return Premium, Either Because of Cancellation or Reduction of Risk



RETURN PREMIUMS

CANCELLATION--REDUCTIONS

New York, ...191....

.....Insurance Co.....(Agents)

Please cancel / reduce .....Date effective.....

Insurance on..... per.....
(State interest insured) (give name vessel)

Assured.....

Reason for cancellation / reduction .....

.....

Basis upon which return premium to be made .....
(If "in accordance with policy conditions", so state otherwise clearly state basis upon which returns are to be made).

IDENTIFICATION OF ORIGINAL INSURANCE

(Give full identification of Risk. If "open" so state.)

Policy No.	From	To	Amount Insured
			$

....
Underwriter. Brokers.

CALCULATION OF RETURN PREMIUM

	Rate	Premium	Brokerage	Net Premium	
Original insurance $.					
Reduced to $.					NET RETURN PREMIUM
	RATE OF RETURN	Return Premium	Less B'kge.	Net Return Premium	$.....
Amount cancelled $.					

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APPENDIX C–1

A. H. U. A. (1917).

AMERICAN HULL UNDERWRITERS FORM, 1917

FOR ACCOUNT OF

LOSS, IF ANY, PAYABLE TO OR ORDER.

DO MAKE INSURANCE AND CAUSE TO BE INSURED, LOST OR NOT LOST,

TO THE AMOUNT OF DOLLARS

AT AND FROM THE DAY OF 19

UNTIL THE DAY OF 19

(BEGINNING AND ENDING WITH

But Warranted as follows:-

Upon the body, tackle, apparel, stores, ordnance, munitions, artillery, boats, and other furniture, boilers and machinery of the Steamship

called the S. S. or by whatsoever name or names the said Vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.

(*Continued on page* 374)

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(*Continued from page* 373)

The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, tackle, apparel, furniture, &c. ....$

Boilers, machinery, &c., and everything connected therewith .....$** } **$

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

The Insurers to be paid in consideration of this insurance **Dollars,**

being at the rate of per cent.

"Warranted that the amount insured for account of the Assured and/or their managers on Disbursements, Commissions and/or similar interests "policy proof of interest" or "full interest admitted" or on excess or increased value of Hull or Machinery however described shall not, except as indicated below, exceed 15% of the insured valuation of the Vessel, but the assured may in addition thereto effect "policy proof of interest" or "full interest admitted" insurance on any of the following interests.

Premiums (reducing or not reducing monthly) to any amount actually at risk, and

Freight and/or Chartered Freight and/or Anticipated Freight and/or Earnings and/or Hire or Profits on Time Charter and/or Charter for series of voyages for any amount not exceeding in the aggregate 25% of the insured valuation of the Vessel; and if the actual amount at risk on any or all of such interests shall exceed such 25% of the insured valuation of the Vessel, the Assured and/or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford underwriters any defense to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and/or their managers to insure in addition General Average and/or Salvage Disbursements whilst at risk.

Touching the Adventures and Perils which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart or Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Riots, or other causes of whatsoever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in, and about the Defence, Safeguard, and Recovery of the said ship, &c., or any part thereof, without prejudice to this Insurance to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery, through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is further agreed, that **if the Ship hereby insured shall come into collision** with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby Insured, we, the Assurers, will pay the Assured or Charterers such proportion of such sum or sums so paid as our subscriptions hereby bear to the value of the Ship hereby Insured. And in cases

(*Continued on page* 375)

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(*Continued from page* 374)

where the liability of the Ship has been contested with the consent in writing of a majority of the Underwriters on the hull and/or machinery (in amount) we will also pay a like proportion of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of **Cross-Liabilities** as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the Majority (in amount) of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators appointed as above to be final and binding. **Provided always** that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy at the time of the Collision in question, would not be subject, nor to a greater extent than the Shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

General Average and Salvage Charges payable in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment. As regards matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provides for such rules), and also when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the United States. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River or on the Yenikale or Bilbao Bar, shall not be deemed a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term **covered by this Policy.**

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of **total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.**

Notwithstanding anything herein contained to the contrary this Policy is warranted free from particular average under 3 per cent., or unless amounting to $4,850, but nevertheless when **the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or** Vessel, Underwriters shall pay the damage occasioned **thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably** incurred, even if no damage be found.

(*Continued on page* 376)

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(*Continued from page* 375)

The warranty and conditions as to average under 3 per cent. to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the Vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous **notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.**

Should the Vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board **and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.**

Notwithstanding anything herein contained to the contrary, this policy is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof, or of any attempt thereat (piracy excepted) **and also from all consequences of hostilities or war-like** operations, whether before or after declaration of war.

To return Net { per cent. for each uncommenced month if it be mutually agreed to cancel this Policy. } and arrival.
{ per cent. net for each consecutive days the Vessel may be laid up in port:— }

A period in port falling between two insurances to be allowed pro rata on each, underwriters on each insurance agreeing to pay their pro rata proportion of the Return due.

In the event of accident whereby loss or damage may result in a claim under this Policy, **notice shall be given to the Underwriters,** where practicable, prior to survey, so that they may **appoint their own Surveyor if they so desire;** and whenever the extent of the damage **is ascertainable,** the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. **In the event of the Assured failing to comply with the conditions of this clause 15 per cent. shall be deducted from the amount of the ascertained claim.**

Held covered in case of any breach of warranty as to cargo, trade, locality, or date of sailing, provided notice be given, and any addi-tional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

Where the Assured has paid, or is liable for, any General Average contribution and the contributory value is greater than the insured **value,** the amount recoverable under this policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and **where** the contributory value has been reduced by a Particular Average for which these Assurers are liable, the amount of Particular Average Claim **under** this policy shall be deducted from the amount insured under this policy in order to ascertain what share of the contribution is recoverable from **these** Assurers; the extent of the liability of these Assurers for salvage shall be computed on the same principle.

In event of non-payment of premium thirty days after attachment this policy may be cancelled by the Assurers upon five **days written notice** being given the assured.

No recovery for a Constructive Total Loss shall be had hereunder, unless the expense of recovering and repairing the vessel shall **exceed** the insured value.

The terms and conditions of this form are to be regarded as substituted for those of policy form to which it is attached, the latter being hereby waived.

(*Concluded*)

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APPENDIX C-2

AMERICAN HULL UNDERWRITERS ASSOCIATION FORM 1918

1918
AUXILIARY SAILING VESSELS
(Wood or Steel Hulls)
WOODEN MOTORSHIPS
(Wood Hulls,
Internal Combustion Engines)

AMOUNT INSURED

$.....

RATE..... %

PREMIUM

$.....

But Warranted as follows:—

Prohibited from loading Ore, except as ballast, and from loading Lime under deck.
Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections or in the River Mersey above Rock Ferry Slip or in River Plate (above Buenos Ayres) or its tributaries, or in the Danube, Demerara or Bilbao River or on the Yenikale or Bilbao Bar, or in any other canal, or lying aground or taking the ground in any harbor or tidal water, shall not be deemed a stranding.
If, under the Trade Warranty contained in this policy, the vessel is permitted to use waters of the Pacific Ocean and/or rivers, harbors, and bays tributary thereto, then it is also warranted;
Not to use any ports or places on east coast of Asia, north of Shanghai (except ports in Japan), nor to attempt the passage of Torres Straits, nor to use the Panama Canal; nor to use any ports or places in Alaska, British Columbia, Washington, Oregon or California, except ports and places inside Straits of Fuca not north of 50° north latitude, Grays Harbor, Willapa Harbor, Columbia and Willamette Rivers, Coos, Humboldt and San Francisco Bays, Port San Luis, San Pedro and San Diego.
Warranted to be towed in and out of Grays Harbor, Willapa Harbor, Coos and Humboldt Bays and to be towed out of Columbia River.
Upon the body, tackle, apparel, stores, ordnance, munitions, artillery, boats and other furniture and machinery of the Auxiliary Sailing Vessel called the .....

..... or by whatsoever name or names the said Vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under power or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim for loss of or damage to deck cargo. Including risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.
The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:—

Hull, tackle, apparel, furniture, &c. .... $.....

Machinery, &c., and everything connected therewith .... $..... $.....
Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull, and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

The Assurers to be paid in consideration of this insurance.....Dollars,

(*Continued on page* 378)

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(*Continued from page 377*)

being at the rate of.....per cent.

Warranted that the amount insured for account of the Assured and/or their managers on Disbursements, Commissions, Freight, Profits or similar interests "policy proof of interest" or "full interest admitted" or on excess or increased value of hull or machinery however described, shall not exceed 15% of the insured valuation of the Vessel.

Touching the Adventures and Perils which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Assailing Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Riots, causing Loss of or Injury to the Property hereby insured, and of all other like Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in, and about the Defence, Safeguard, and Recovery of the said Ship, &c., or any part thereof, without prejudice to this insurance to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Assurer or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance also specially to cover (subject to the conditions of this Policy) loss of, or damage to hull or machinery, directly caused by accidents in loading, discharging or handling cargo, or caused through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through bursting or explosions of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager. Master, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the vessel.

And it is further agreed, that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby Insured, we, the Assurers, will pay the Assured or Charterers such proportion of three-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby Insured. And in cases where the liability of the Ship has been contested with the consent in writing of a majority of the Underwriters on the hull and/or machinery (in amount) we will also pay a like proportion of three-fourths parts of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of *Cross-Liabilities* as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the majority (in amount) of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collisions, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy at the time of the collision in question, would not be subject, nor to a greater extent than the Shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

In case of claim for loss or damage there shall be deducted from the cost of metal, caulking under the metal and docking, first the value of the old metal and nails, and from the remainder two and one-half per cent. for each month that the metal shall have been on said vessel when the same is taken off, and if it has been on three years the cost shall be wholly borne by the insured; upon vessel not sheathed with metal there shall be deducted from the expense of caulking and cementing the bottom up to the light water line and docking therefor, two per cent. for each and every month since vessel was last caulked, and there shall be deducted from the cost of cleaning and painting the bottom and docking therefor one-twelfth for each and every month since the vessel was last painted, and from the cost of other caulking and from sails there shall be deducted 25 per cent. for each full year of use, and from all other repairs, except upon anchors, there shall be deducted one-third on vessels more than twelve months old from date of registry. Upon steel vessels, however, the deduction of one-third is not to be made from iron or steel work of hull, masts, or spars, but the above deductions for painting and other charges shall be made.

Notwithstanding anything herein contained to the contrary, this policy is warranted free from Particular Average on Hull under three per cent. (3%) of the insured value of Hull or unless amounting to $5,000 net, but nevertheless when the vessel shall have been stranded, sunk, on fire, or in collision with any other ship or vessel, underwriters shall, subject to the deductions provided for in lines 64 to 71 of this policy, pay the damage to Hull occasioned thereby, and the expense of sighting the bottom after stranding shall be paid if reasonably incurred, even if no damage be found; and free from Particular Average on machinery and everything connected therewith unless caused by stranding, sinking, burning, or collision and from all such claims there shall be deducted 10% of the valuation herein of machinery.

(*Continued on page 379*)

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY—

Warranted absolutely not to engage in transatlantic trade between September 15th and May 15th.

Warranted free of capture, seizure, arrest, restraint, detainment, confiscation or destruction of or damage thereto or of any attempt thereat (whether by any Government or by any person acting on behalf of or in connection with any political organization) and of all consequences thereof or of any breach or attempted breach thereof.

Warranted free of loss or damage caused by strikers, locked-out workmen, persons taking part in labor disturbances or riots or civil commotions.

Should the interest hereby insured be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has meantime been lost or arrived at her destination. This Policy also terminates on the Vessel's arrival at her first port of discharge of which same such condition ends to suspended until arrival at final port of discharge if such stops are part of destination of the ballast.

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(*Continued from page* 378)

Free of General Average and any and all other claims or expense, salvage excepted, resulting from failure, breakdown or derangement of machinery.

General Average and Salvage Charges payable in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment, but as to matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provides for such rules), and also excepting that when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the port of New York. When an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance therewith. Nothing in this paragraph, however, shall in any way waive or modify the preceding paragraph.

And furthermore subject, in all cases, to the following contributory value clause:

Where the Assured is liable for and has paid any general average contribution and the contributory value is greater than the insured value, the amount recoverable under this Policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a particular average for which these Assurers are liable, the amount of particular average claim under this Policy shall be deducted from the amount insured under this Policy in order to ascertain what share of the contribution is recoverable from these Assurers: the extent of the liability of these Assurers for salvage shall be computed on the same principle.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

No recovery for a constructive total loss shall be had hereunder, unless the expense of recovering and repairing the vessel shall exceed the insured value.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

The warranty and conditions as to average under 3 per cent. to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the Vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice in writing be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

At the expiration of this policy to return .....per cent. for every thirty consecutive days the vessel may be laid up in port out of commission and not under average (provided no claim be made for loss incurred during the entire term laid up), and to return ..... per cent. for every thirty days of unexpired time if it be mutually agreed to cancel this policy.

In event of non-payment of premium thirty days after attachment this policy may be cancelled by the Assurers upon five days' written notice being given the assured.

In the event of accident whereby loss or damage may result in a claim under this Policy, written notice shall be given to the Underwriters, where practicable, prior to survey, so that they may appoint their own surveyor if they so desire; and whenever the extent of the damage is ascertainable the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause 15 per cent. shall be deducted from the amount of the ascertained claim.

It is agreed that no suit or action for the recovery of any claim arising under this policy shall be maintainable in any Court, unless such suit or action shall have been commenced within one year from the date of the happening of the loss out of which the said claim arose; PROVIDED, HOWEVER, that if, by the laws of the State within which this policy is issued, such limitation is invalid, then any such claim shall be void unless action is commenced within the shortest limit of time permitted by the laws of such State to be fixed herein.

Held covered in case of any breach of warranty as to cargo, trade, locality or date of sailing, provided notice be given and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

The terms and conditions of this form are to be regarded as substituted for those of Policy (No. .....) to which it is attached; the latter (except any "Provisions required by law to be stated" herein) being hereby waived.

(*Concluded*)

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APPENDIX C–3

American Hull Underwriters Form for Builders Risk

_____for account of themselves and/or any owner or owners of the vessel as interest may appear at the time of the happening of the loss. Loss, if any, payable in funds current in the United States to

Amount Insured,

$.....

_____or order do make insurance and cause to be insured to the amount of _____ _____ Dollars for the period of time commencing_____at noon, New York time, (which is warranted by the assured to be the date of laying of the keel) and ending _____ at noon, New York time, or until delivery at_____if delivered at an earlier date. In the event of such delivery not being effected by_____ this policy may be extended at_____monthly additional premium provided notice of the extension be given to this Company prior to_____ In no case shall this insurance extend beyond delivery of the vessel.

In the event of cancellation to return_____per cent. net for each uncommenced month cancelled, but such return shall not exceed in all_____.

On Hull, Tackle, Apparel, Ordnance, Munitions, Artillery, Engines, Boilers, Machinery, Appurtenances, etc. (including plans, patterns, moulds, etc.) Boats and other Furniture and Fixtures and all material belonging and destined for_____ _____building at _____ as per clauses hereinbelow specified.

Completed Contract Price

Rate.....%

Premium,

$.....

In the event of loss the underwriters shall not be liable for a greater proportion thereof than the amount of this insurance bears to the completed contract price.

This Company to be paid in consideration of this insurance_____ Dollars being at the rate of_____per cent.

TOUCHING the adventures and perils which we, the said assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what nation, condition or quality soever, Barratry of the Master and Mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment or damage of the said ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defence, safeguard and recovery of the said ship, &c., or any part thereof,

(*Continued on page* 381)

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(*Continued from page* 380)

without prejudice to this insurance; to the charges whereof the said insurance company will contribute according to the Rate and Quantity of the sum herein Assured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment. With leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron slipways, graving docks and/or pontoon or dry docks as often as may be done during the currency of this Policy

CLAUSES FOR BUILDERS' RISKS

This Insurance is also to cover all risks, including fire, while under construction and/or fitting out, including materials in Buildings, Workshops, yards and docks of the assured, or on quays, pontoons, craft, &c., and all risk while in transit to and from the works and/or the vessel wherever she may be lying, also all risks of loss or damage through collapse of supports or ways from any cause whatever, and all risks of launching and breakage of the ways.

This insurance is also to cover all risks of trial trips, loaded or otherwise as often as required, and all risks whilst proceeding to and returning from the trial course.

With leave to proceed to and from any wet or dry docks, harbours, ways, cradles, and pontoons during the currency of this policy.

With leave to fire guns and torpedoes but no claim to attach hereto for loss of or damage to same or to ship or machinery unless the accident results in the total loss of the vessel.

In case of failure of launch, underwriters to bear all subsequent expenses incurred in completing launch.

Average payable irrespective of percentage, and without deduction of one-third, whether the Average be particular or general.

General Average and Salvage charges as per foreign custom, payable as per foreign statement, and/or per York-Antwerp rules, if required: and in the event of Salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under "Collision Clause," and the amount so awarded, so far as applicable to the interest hereby insured, shall constitute a charge under this policy.

In the event of deviation to be held covered at an additional premium to be hereafter arranged.

To cover while building all damage to hull, machinery, apparel, or furniture, caused by settling of the stocks, or failure or breakage of shores, blocking or staging, or of hoisting or other gear, either before or after launching and while fitting out.

It is agreed that any changes of interest in the steamer hereby insured shall not affect the validity of this policy.

And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover loss of or damage to the hull or machinery, through negligence of Master, Mariners, Engineers or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery, or Hull, or from explosions or other causes, arising either on shore or otherwise, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship or any of them, or by the Manager, and to cover all risks incidental to steam navigation, or in graving docks.

COLLISION CLAUSE.

And it is further agreed that if the Ship hereby Insured shall come into collision with any other Ship or Vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby Insured, we the assurers, will pay the assured such proportion of such sum or sums so paid as our subscriptions thereto bear to the completed contract price of the Ship hereby Insured. And in cases where the liability of the Ship has been contested, with the consent, in writing, of a majority of the underwriters on the hull and/or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid, but when both Vessels are to blame, then, unless the liability of the owners of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS LIABILITIES, as if the owners of each Vessel had been compelled to pay to the owners of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

And it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same owners, all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the managing owners of both Vessels, and one to be appointed by the majority in amount of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding.

This clause shall also extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, or for injury to harbours, wharves, piers, stages, and similar structures.

PROTECTION AND INDEMNITY CLAUSE.

It is further agreed that if the Assured shall by reason of his interest in the insured ship become liable to pay and shall pay an, sum or sums in respect of any responsibility, claims, demand, damages, and/or expenses arising from or occasioned by any of the following matters or things during the currency of this policy, that is to say:—

Loss of or damage to any other ship or boat or goods, merchandise, freight, or other things or interests, whatsoever on board such other ship or boat caused proximately or otherwise by the ship insured in so far as the same is not covered by the running down clause set out above.

Loss of or damage to any goods, merchandise, freight or other things or interests, whatsoever other than as aforesaid whether on board the said Steamship or not, which may arise from any cause whatever.

Loss of or damage to any harbour, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever, or to any goods or property in or on the same, howsoever caused.

Any attempted or actual raising, removal or destruction of the wreck of the insured ship or the cargo thereof, or any neglect or failure to raise, remove, or destroy the same.

Any sum or sums for which the Assured may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by the Liverpool and London Steamship Protection Association, Limited, and/or North of England Protecting and Indemnity Association, but excluding loss of life and personal injury.

These assurers will pay the Assured such proportion of such sum or sums so paid, or, which may be required to indemnify the Assured for such loss, as their respective subscriptions bear to the completed contract price of the ship hereby insured, and where the liability of the Assured has been contested with the consent in writing of a majority (in amount) of the Underwriters on the ship hereby insured, these assurers will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

NOTWITHSTANDING THE FOREGOING, this Policy is:—

(A) Warranted free from any claim arising directly or indirectly under Workmens' Compensation or Employers Liability Acts and any other Statutory or Common Law liability in respect of accidents to any person or persons whomsoever.

(B) Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

(C) Warranted free of loss or damage caused by strikers, locked-out workmen or persons taking part in labour disturbances or riots or civil commotions.

(D) Warranted free of loss or damage caused by earthquake.

(E) Warranted free of any consequential damages or claims for loss through delay however caused.

(F) Warranted free from claim for loss or damage to engines, boilers and all other materials while in transport, except in the port at which the vessel is being built.

This policy shall not be vitiated by any unintentional error in description of interest or voyage, provided the same be communicated to Assurers as soon as known to the assured, and an additional premium paid if required.

The words "Owner" and "Assured" as used in this policy shall be interpreted to mean either "Builder" or "Owner" or both.

The terms and conditions of this form are to be regarded as substituted for those of the policy to which it is attached, the latter being hereby waived.

(*Concluded*)

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1918 LAKE TIME CLAUSES. 1918

HULLS.

Be it known that

Amount Insured

$

Rate

$

Premium

$

as well in own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause and them and every of them, to be insured, lost or not lost, on account of whom it may concern; in case of loss to be paid in funds current in the United States, to.....

.....or order

for.....dollars ($.....)

at and from the.....day of.....191...., at (.....) (Chicago time) until the.....day of.....191...., at (.....) (Chicago time).

Upon the Hull, Tackle, Apparel, Furniture, Stores, Outfit, Fittings, and also the Engines, Boilers and Machinery, Electric Light Plant, including Dynamo, of the good.....called the..... or by whatsoever other name or names the said vessel is or shall be named or called.

The said vessel, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers, in this Policy are and shall be valued at as follows:

Hull, Tackle, Apparel, Furniture, Stores, Outfit, Fittings, $.....

Engines, Propellor Wheel or Wheels, Boilers and Machinery, Electric Light Plant and Dynamo, $.....

.....Dollars

without any further accounting to be given by the Assured to the Assurers for the same.

These Assurers shall be paid in consideration of this insurance.....

.....Dollars,

(*Continued on page* 383)

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(*Continued from page* 382)

payable in cash, and in case the said premium shall not be paid within sixty days after the date of attachment of this Policy, these assurers shall have the right to cancel same, and such cancellation shall take effect within ten days after the mailing of notice of cancellation, addressed to the Assured and the Payee named herein at his or their last known address, but such a proportional part of any such premium as shall have been earned up to the date of such cancellation shall thereupon remain and become immediately due and payable.

Losses shall be payable within sixty days after proof of loss or damage covered by this Policy, and of the amount thereof, and of the interest of the Assured, shall have been made and presented at the offices of these Assurers, the amount of premium on this policy, if unpaid, and all other indebtedness, due these assurers being first deducted.

This Policy is agreed to cover the Vessel insured, as employment may offer, in port or at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades, whatsoever and wheresoever, under steam or sail, with leave to sail with or without pilots, to tow and assist vessels or craft in all situations, and to be towed, and to save or aid, and to attempt to save or aid life, person or property, also to take in and/or retain cargo on board, and/or to move in port as may be required during the winter season.

With liberty to discharge, exchange and take on board goods, specie, passengers and stores, wherever the vessel may be, call at, or proceed to, and with liberty to carry goods, live cattle, etc., on deck or otherwise, and liable for contribution towards the jettison of property from on deck, if contribution therefor be claimable from vessel.

Warranted that vessel shall not be engaged in navigation from November 30th, midnight, to April 15th, midnight, but in the event of the vessel being on a voyage at midnight on the 30th day of November (Chicago time), this policy to continue at pro rata of the season rate until arrival at destination, provided notice thereof be given by the Assured to the Agent of the Assurers prior to midnight of the 30th day of November (Chicago time), and any breach of this warranty shall vitiate this insurance during the continuance of such breach only.

It is hereby understood and agreed that in consideration of an additional premium at the rates specified below, Steel steamers are held covered if sailing between noon, April 1st and midnight, April 15th; also between midnight, November 30th and midnight, December 12th; but warranted by the assured that notice in writing be given by the assured to the Agents of the Assurers prior to the commencement of any sailing specified below:

Navigation between noon, April 1st and midnight, April 15th, pro rata daily navigating rate from time of sailing to April 15th, midnight.

Sailings after midnight, November 30th not below Montreal,

Warranted sailing on last voyage from last loading port not later than December 5th	½%
Warranted sailing on last voyage from last loading port not later than December 9th	¾%
Warranted sailing on last voyage from last loading port not later than December 12th	1%
Port to port on one lake only, light for the purpose of laying up sailing not later than December 12th.	¼%

Notwithstanding the above, should the vessel be at sea at midnight, November 30th, the assured is not released from

(*Continued on page* 384)

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(*Continued from page* 383)

the warranty to pay pro rata of the season rate from midnight, November 30th, until arrival at destination as provided in this policy.

Warranted by the Assured to navigate only the waters, bays, harbors, rivers, canals, and other tributaries of the Great Lakes, not below Lake Erie, but including Niagara River.

Warranted free from Particular Average under three per cent., unless the Vessel be stranded, sunk, burnt, on fire, or in collision, or the damage be caused by contact with any substance other than water, but in the event of any claim under this policy (other than claim for Total Loss or Constructive Total Loss) the Assurers to pay only the excess of $500 each accident.

Notwithstanding the foregoing, and in substitution of the clause immediately preceding, the Assurers, on all vessels sailing during April or December, only to be liable for the excess of three per cent. each accident on the entire value as set forth above in respect of all claims arising from damage by ice, except claims for total or constructive total loss.

The Warranty and conditions as to average to be applicable to each voyage; a continuous trip from port of loading to final port of discharge, or, in case of the vessel going light, a continuous trip from port of discharge to port of loading, to constitute a voyage, but this clause in no way releases the Assured from liability to bear the first $500 each accident.

Subject to the foregoing Average payable without deduction "new for old" whether the average be particular or general, so far as regards metal or composite vessels, but on wooden vessels one-third to be deducted.

Average payable on each valuation as if separately insured or on the whole.

Subject to the foregoing, General average and all claims hereunder payable as per American Lake Adjustment, and in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any vessel belonging in part or in whole to the same Owners, it is hereby agreed that the value of such services (without regard to the common ownership of the vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under "Collision Clause," and the amount so awarded, so far as is applicable to the interest hereby insured, shall constitute a charge under this Policy.

In adjusting and determining any and all losses, damages and amounts under this policy the valuations stated herein shall be considered the value of the Vessel.

It is understood and agreed that the fees of the Assured, his Superintendent and the Assured's officers, manager and/or other servants are not collectible under this policy.

This insurance also specially to cover (subject to the above free of average warranty) loss of, or damage to the hull or machinery, through the negligence of master, mariners, engineers or pilots, or through explosions, bursting of boilers, breaking of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the Vessel or any of them, or by the manager.

Touching the adventures and perils which the said Assurers are content to bear and do take upon themselves by this policy, they are of the inland seas and water, enemies, pirates, rovers, thieves, fires, explosions, collisions, jettisons, barratry of the master or mariners, and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of said Vessel or any part thereof.

And in case of any loss or misfortune it shall be deemed lawful and necessary for the Assured, their factors, servants and assigns, to sue, labor and travel for in and about the defence, safeguard and recovery of the said Vessel, etc., or any part thereof, without prejudice to this insurance; to the charges whereof the said Assurers will contribute according to the rate and quantity of the sum herein assured. No abandonment shall in any case be effectual unless notice thereof be made in writing to the Agents of the Assurers nor unless the amount of the loss exceeds seventy-five per cent. of the combined value of this policy, as set forth above.

(*Continued on page* 385)

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(*Continued from page* 384)

And it is especially declared and agreed that no acts of the insurer or insured shall be considered as a waiver or acceptance of the abandonment.

Warranted free from capture, seizure and detention, and the consequences of any attempt thereat, and all other consequences of hostilities, piracy excepted.

To return per cent. net if not under average for every fifteen consecutive days vessel may be laid up in port or in dock during navigating period, stipulated in this policy, during such lay up period the Vessel being at the risk of the Underwriters and arrival.

To return per cent. net for every thirty days of unexpired time of navigating period, stipulated in this policy, provided it be mutually agreed to cancel this policy and arrival.

Should the vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast.

COLLISION CLAUSE.

And it is further agreed that if the Vessel hereby insured shall come into collision with any other ship or vessel and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Vessel hereby insured, we, the Assurers, will pay the Assured such proportion of such sum or sums so paid, subject to a deduction of $500 for each accident, as our subscriptions hereto bear to the value of the Vessel hereby insured. And in cases where the liability of the Vessel has been contested with the consent, in writing, of a majority of the Underwriters on the hull and/or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of cross liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damage as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured, in consequence of such collision. It is understood and agreed, however, that, in the event of claim under particular average clause also being involved with collision liability claim in the same accident, only one deductible average of $500 to apply.

And it is further agreed that the principles involved in this Clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners, all questions of responsibility and amount of liability as between the two Vessels being left to the decision of a single arbitrator, if the parties can agree upon a single arbitrator, or failing such agreement, to the decision of arbitrators, one to be appointed by the Managing Owners of both Vessels, and one to be appointed by the majority in amount of the Underwriters interested in each Vessel. The two arbitrators chosen to choose a third arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such single, or of any two of such three arbitrators, appointed as above, to be final and binding.

Provided always that this Clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life or personal injury.

It is also agreed that liability under the Collision Clause shall extend to collision with rafts.

LEGAL REPRESENTATION CLAUSE.

Two-thirds (in amount) of the Assurers on hull and

(*Continued on page* 386)

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(*Continued from page* 385)

machinery shall have the option of naming the attorneys who shall represent the Assured in the prosecution or defense of any litigation between the Assured and third parties concerning any claim, loss or interest covered by this policy, and shall have the direction of such litigation.

TENDER CLAUSE.

In the event of accident, whereby loss or damage may result in a claim under this policy, prompt notice thereof with full and accurate details, shall be given in writing by the Assured to the Underwriters' Surveyor, R. Parry-Jones, or other surveyor appointed by Underwriters in his stead, and, when required by such surveyor, the vessel shall be forthwith docked by the Assured for survey and/or repair, such surveyor also having the right to veto in connection with the place of repair proposed. The Underwriters or their surveyor may take or may require the Assured to take tenders for the repair of damage claimable under this Policy, and in cases where a tender is accepted with the approval of the Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause, or making arrangements for the repairs without consulting and securing the consent of the afore-mentioned surveyor, or to give the required notice of survey within 30 days of each accident, 15 per cent. will be deducted from the amount of the ascertained claim.

The log book of the Vessel shall be properly kept, and shall contain full information of every disaster met with and be at all times available for examination by the Underwriters' surveyor.

COMPASSES CLAUSE.

The representative of the Underwriters shall have the right to board the Vessel hereby insured at any time for the purpose of ascertaining whether the Compasses are in order, and, if the Compasses are found to be out of order, they shall immediately be adjusted at the expense of the owner.

WINTER MOORINGS CLAUSE.

Warranted to have the Vessel insured under this Policy properly moored in a safe place and under conditions satisfactory to the representatives of the Underwriters.

Warranted no claim owing to Vessel being moored in the outer harbor of Buffalo after close of navigation unless mooring specially approved by Underwriters, and additional premium paid if required.

LIMITATION OF DATE OF REPAIR OR CLAIM CLAUSE.

Warranted by the assured to have all repairs executed within fifteen months from the date of the accident, and all claims presented to the Underwriters within the same period, except collision liability and salvage and general average claims.

It is agreed that these clauses shall be considered to supersede and annul any clauses to the same or similar effect printed in or attached to this policy, and that, for the purposes of construction these clauses shall be deemed of the nature of written additions thereto.

(*Concluded*)

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APPENDIX E

MARINE INSURANCE ACT, 1906

[6 EDW. 7. CH. 41]

ARRANGEMENTS OF SECTIONS

Marine Insurance

Section
1. Marine insurance defined.
2. Mixed sea and land risks.
3. Marine adventure and maritime perils defined.

Insurable Interest

4. Avoidance of wagering or gaming contracts.
5. Insurable interest defined.
6. When interest must attach.
7. Defeasible or contingent interest.
8. Partial interest.
9. Re-insurance.
10. Bottomry.
11. Master's and seamen's wages.
12. Advance freight.
13. Charges of insurance.
14. Quantum of interest.
15. Assignment of interest.

Insurable Value

16. Measure of insurable value.

Disclosure and Representations

17. Insurance is uberrimae fidei.
18. Disclosure by assured.
19. Disclosure by agent effecting insurance.
20. Representations pending negotiation of contact.
21. When contract is deemed to be concluded.

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The Policy

Section
22. Contract must be embodied in policy.
23. What policy must specify.
24. Signature of insurer.
25. Voyage and time policies.
26. Designation of subject-matter.
27. Valued policy.
28. Unvalued policy.
29. Floating policy by ship or ships.
30. Construction of terms in policy.
31. Premium to be arranged.

Double Insurance

32. Double insurance.

Warranties, &c.

33. Nature of warranty.
34. When breach of warranty excused.
35. Express warranties.
36. Warranty of neutrality.
37. No implied warranty of nationality.
38. Warranty of good safety.
39. Warranty of seaworthiness of ship.
40. No implied warranty that goods are seaworthy
41. Warranty of legality.

The Voyage

42. Implied condition as to commencement of risk.
43. Alteration of port of departure.
44. Sailing for different destination.
45. Change of voyage.
46. Deviation.
47. Several ports of discharge.
48. Delay in voyage.
49. Excuses for deviation or delay.

Assignment of Policy

50. When and how policy is assignable.
51. Assured who has no interest cannot assign.

The Premium

52. When premium payable.
53. Policy effected through broker.
54. Effect of receipt on policy.

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Loss and Abandonment

55. Included and excluded losses.
56. Partial and total loss.
57. Actual total loss.
58. Missing ship.
59. Effect of transhipment, &c.
60. Constructive total loss defined.
61. Effect of constructive total loss.
62. Notice of abandonment.
63. Effect of abandonment.

Partial Losses (Including Salvage and General Average and Particular Charges)

64. Particular average loss.
65. Salvage charges.
66. General average loss.

Measure of Indemnity

67. Extent of liability of insurer for loss.
68. Total loss.
69. Partial loss of ship.
70. Partial loss of freight.
71. Partial loss of goods, merchandise, &c.
72. Apportionment of valuation.
73. General average contributions and salvage charges.
74. Liabilities to third parties.
75. General provisions as to measure of indemnity.
76. Particular average warranties.
77. Successive losses.
78. Suing and labouring clause.

Rights of Insurer on Payment

79. Right of subrogation.
80. Right of contribution.
81. Effect of under insurance.

Return of Premium

82. Enforcement of return.
83. Return by agreement.
84. Return for failure of consideration.

Mutual Insurance

85. Modification of Act in case of mutual insurance.

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Supplemental

86. Ratification by assured.
87. Implied obligations varied by agreement or usage.
88. Reasonable time, &c. a question of fact.
89. Slip as evidence.
90. Interpretation of terms.
91. Savings.
92. Repeals.
93. Commencement.
94. Short title.

SCHEDULES.

A.D. 1906.

An Act to codify the Law relating to Marine Insurance.

[December 21, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Marine Insurance

Marine Insurance Defined.

1. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

Mixed Sea and Land Risks.

2. (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Marine Adventure and Maritime Perils Defined.

3. (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where—

(*a*) Any ship goods or other movables are exposed to maritime perils. Such property is in this Act referred to as "insurable property;"

(*b*) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

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(*c*) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

Insurable Interest

Avoidance of Wagering or Gaming Contracts.

4. (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

(*a*) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(*b*) Where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

Insurable Interest Defined.

5. (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

When Interest Must Attach.

6. (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured "lost or not lost," the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

Defeasible or Contingent Interest.

7. (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have

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rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

Partial Interest.

8. A partial interest of any nature is insurable.

Reinsurance.

9. (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

Bottomry.

10. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

Master's and Seamen's Wages.

11. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

Advance Freight.

12. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

Charges of Insurance.

13. The assured has an insurable interest in the charges of any insurance which he may effect.

Quantum of Interest.

14. (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

Assignment of Interest.

15. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.

Insurable Value

Measure of Insurable Value.

16. Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:—

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages,

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and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade:

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole:

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Disclosure and Representations

Insurance is Uberrimae Fidei.

17. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

Disclosure by Assured.

18. (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:—

(*a*) Any circumstance which diminishes the risk;

(*b*) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;

(*c*) Any circumstance as to which information is waived by the insurer;

(*d*) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term "circumstance" includes any communication made to, or information received by, the assured.

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Disclosure by Agent Effecting Insurance.

19. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer—

(*a*) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and

(*b*) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

Representations Pending Negotiation of Contract.

20. (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not is, in each case, a question of fact.

When Contract is Deemed to be Concluded.

21. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it be unstamped.

The Policy

Contract Must be Embodied in Policy.

22. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

What Policy Must Specify.

23. A marine policy must specify—

(1) The name of the assured, or of some person who effects the insurance on his behalf:

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(2) The subject-matter insured and the risk insured against:
(3) The voyage, or period of time, or both, as the case may be, covered by the insurance:
(4) The sum or sums insured:
(5) The name or names of the insurers.

Signature of Insurer.

24. (1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

Voyage and Time Policies.

25. (1) Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy," and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy." A contract for both voyage and time may be included in the same policy.

(2) Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid.

Designation of subject-matter.

26. (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

Valued Policy.

27. (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

Unvalued Policy.

28. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner herein-before specified.

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Floating Policy by Ship or Ships.

29. (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

Construction of Terms in Policy.

30. (1) A policy may be in the form in the First Schedule to this Act.

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them.

Premium to be Arranged.

31. (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

Double Insurance

Double Insurance.

32. (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance—

(*a*) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(*b*) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(*c*) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

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(*d*) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Warranties, &c.

Nature of Warranty.

33. (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

When Breach of Warranty Excused.

34. (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer.

Express Warranties.

35. (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

Warranty of Neutrality.

36. (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

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No Implied Warranty of Nationality.

37. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

Warranty of Good Safety.

38. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

Warranty of Seaworthiness of Ship.

39. (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

No Implied Warranty that Goods are Seaworthy.

40. (1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

Warranty of Legality.

41. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

The Voyage

Implied Condition as to Commencement of Risk.

42. (1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negatived by showing that the delay

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was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

Alteration of Port of Departure.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

Sailing for Different Destination.

44. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

Change of Voyage.

45. (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

Deviation.

46. (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy—

(*a*) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(*b*) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

Several Ports of Discharge.

47. (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.

(2) Where the policy is to "ports of discharge," within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation.

Delay in Voyage.

48. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

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Excuses for Deviation or Delay.

49. (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused—

(*a*) Where authorized by any special term in the policy; or

(*b*) Where caused by circumstances beyond the control of the master and his employer; or

(*c*) Where reasonably necessary in order to comply with an express or implied warranty; or

(*d*) Where reasonably necessary for the safety of the ship or subject-matter insured; or

(*e*) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(*f*) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(*g*) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch.

Assignment of Policy

When and How Policy is Assignable.

50. (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

Assured Who Has no Interest Cannot Assign.

51. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative;

Provided that nothing in this section affects the assignment of a policy after loss.

The Premium

When Premium Payable.

52. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium.

Policy Effected Through Broker.

53. (1) Unless otherwise agreed, where a marine policy is effected on

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behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

Effect of Receipt on Policy.

54. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

Loss and Abandonment

Included and Excluded Losses.

55. (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular,—

(*a*) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(*b*) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(*c*) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Partial and Total Loss.

56. (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

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(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

Actual Total Loss.

57. (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

Missing Ship.

58. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

Effect of Transhipment, &c.

59. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re-shipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues notwithstanding the landing or transhipment.

Constructive Total Loss Defined.

60. (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss—

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (*a*) it is unlikely that he can recover the ship or goods, as the case may be, or (*b*) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

Effect of Constructive Total Loss.

61. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

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Notice of Abandonment.

62. (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

Effect of Abandonment.

63. (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Partial Losses (including Salvage and General Average and Particular Charges)

Particular Average Loss.

64. (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and

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salvage charges, are called particular charges. Particular charges are not included in particular average.

Salvage Charges.

65. (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

General Average Loss.

66. (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

Measure of Indemnity

Extent of Liability of Insurer for Loss.

67. (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full

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extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

Total Loss.

68. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,—

(1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy:

(2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

Partial Loss of Ship.

69. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:—

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

Partial Loss of Freight.

70. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

Partial Loss of Goods, Merchandise, &c.

71. Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows:—

(1) Where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

(2) Where part of the goods, merchandise, or other movables insured

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by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:

(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value:

(4) "Gross value" means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers.

Apportionment of Valuation.

72. (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

General Average Contributions and Salvage Charges.

73. (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

Liabilities to Third Parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

General Provisions as to Measure of Indemnity.

75. (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure

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of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

Particular Average Warranties.

76. (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

Successive Losses.

77. (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

Suing and Labouring Clause.

78. (1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss

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not covered by the policy are not recoverable under the suing and labouring clause.

Rights of Insurer on Payment

Right of Subrogation.

79. (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

Right of Contribution.

80. (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

Effect of Under Insurance.

81. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

Return of Premium

Enforcement of Return.

82. Where the premium, or a proportionate part thereof is, by this Act declared to be returnable,—

(*a*) If already paid, it may be recovered by the assured from the insurer; and

(*b*) If unpaid, it may be retained by the assured or his agent.

Return by Agreement.

83. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

Return for Failure of Consideration.

84. (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

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(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular—

(*a*) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable:

(*b*) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable:

Provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

(*c*) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering

(*d*) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;

(*e*) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(*f*) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Mutual Insurance

Modification of Act in Case of Mutual Insurance.

85. (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

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Supplemental

Ratification by Assured.

86. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

Implied Obligations Varied by Agreement or Usage.

87. (1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

Reasonable Time, &c. a Question of Fact.

88. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

Slip as Evidence.

89. Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding.

Interpretation of Terms.

90. In this Act, unless the context or subject-matter otherwise requires,—

"Action" includes counter-claim and set off:

"Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money:

"Movables" means any movable tangible property, other than the ship, and includes money, valuable securities, and other documents:

"Policy" means a marine policy.

Savings.

91. (1) Nothing in this Act, or in any repeal effected thereby, shall affect—

(*a*) The provisions of the Stamp Act, 1891, or any enactment for the time being in force relating to the revenue;

(*b*) The provisions of the Companies Act, 1862, or any enactment amending or substituted for the same;

(*c*) The provisions of any statute not expressly repealed by this Act.

(2) The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

Repeals.

92. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule.

Commencement.

93. This Act shall come into operation on the first day of January one thousand nine hundred and seven.

Short Title.

94. This Act may be cited as the Marine Insurance Act, 1906.

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SCHEDULES

FIRST SCHEDULE

FORM OF POLICY

Lloyd's S. G. Policy.

BE IT KNOWN THAT as well in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause and them, and every of them, to be insured lost or not lost, at and from

Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship,

upon the said ship, &c.

and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever shall be arrived at

upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever

without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Sue and labor clause

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors,

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servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

Waiver clause

In Witness whereof we, the assurers, have subscribed our names and sums assured in London.

Memorandum

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds percent, and all other goods, also the ship and freight, are warranted free from average, under three pounds percent unless general, or the ship be stranded.

Rules for Construction of Policy

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:—

Lost or not Lost.

1 Where the subject-matter is insured "lost or not lost," and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.

From.

2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

At and From. [Ship.]

3. (*a*) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.

(*b*) If she be not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

[Freight.]

(*c*) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded

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the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(*d*) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

From the Loading thereof.

4. Where goods or other movables are insured "from the loading thereof," the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

Safely Landed.

5. Where the risk on goods or other movables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

Touch and Stay.

6. In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

Perils of the Seas.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the oridnary action of the winds and waves.

Pirates.

8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

Thieves.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

Restraint of Princes.

10. The term "arrests, &c., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

Barratry.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be the charterer.

All Other Perils.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

Average unless General.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges."

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Stranded.

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

Ship.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

Freight.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money.

Goods.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

SECOND SCHEDULE

Enactments Repealed

Session and Chapter	Title or Short Title	Extent of Repeal
19 Geo. 2. c. 37.	An Act to regulate insurance on ships belonging to the subjects of Great Britain, and on merchandises or effects laden thereon.	The whole Act.
28 Geo. 3. c. 56.	An Act to repeal an Act made in the twenty-fifth year of the reign of his present Majesty, intituled "An Act for regulating Insurances on Ships, and on goods, merchandises, or effects," and for substituting other provisions for the like purpose in lieu thereof.	The whole Act so far as it relates to marine insurance.
31 & 32 Vict. c. 86.	The Policies of Marine Assurance Act, 1868.	The whole Act.

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APPENDIX F

MARINE INSURANCE (GAMBLING POLICIES)

A BILL TO PROHIBIT GAMBLING ON LOSS BY MARITIME PERILS (1909)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Prohibition of Gambling on Loss by Maritime Perils.*—(1) If

(*a*) Any person effects a contract of marine insurance without having any bonâ fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a bonâ fide expectation of such an interest; or

(*b*) Any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding one hundred pounds, and in either case to forfeit any money he may receive under the contract.

(2) Any broker through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this Act.

(3) Proceedings under this Act, shall not be instituted without the consent of the Attorney-General.

(4) Proceedings shall not be instituted under this Act against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract

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was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this Act.

(5) If proceedings under this Act are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made "interest or no interest" or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer" or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) Any person aggrieved by an order or decision of a court of summary jurisdiction under this Act, may appeal to quarter sessions.

(7) For the purposes of this Act the expression "Owner" includes charterer.

(8) Subsections (3) and (6) of this section shall not apply to Scotland.

2. *Short Title.*—This Act may be cited as the Marine Insurance (Gambling Policies) Act, 1909, and the Marine Insurance Act, 1906, and this Act may be cited together as the Marine Insurance Acts, 1906 and 1909.

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APPENDIX G

THE HARTER ACT

ACT OF CONGRESS, APPROVED FEBRUARY 13, 1893

An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. That it shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Section 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent or manager to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

Section 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, or owners, agents, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master, be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

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Section 4. That it shall be the duty of the owner or owners, master, or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

Section 5. That for a violation of any of the provisions of this Act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

Section 6. That this Act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

Section 7. Sections one and four of this act shall not apply to the transportation of live animals.

Section 8. That this Act shall take effect from and after the first day of July, eighteen hundred and ninety-three.

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APPENDIX H

YORK-ANTWERP RULES OF 1890

RULE I.—JETTISON OF DECK CARGO

No jettison of deck cargo shall be made good as general average.

Every structure not built in with the frame of the vessel shall be considered to be a part of the deck of a vessel.

RULE II.— DAMAGE BY JETTISON AND SACRIFICE FOR THE COMMON SAFETY

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III.—EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo or to such separate packages of cargo, as have been on fire.

RULE IV.—CUTTING AWAY WRECK

Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

RULE V.—VOLUNTARY STRANDING

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably sink, or drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight, or any of them, by such intentional running on shore shall be made good as general average. But in all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

RULE VI.—CARRYING PRESS OF SAIL.—DAMAGE TO OR LOSS OF SAILS

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground, for the common safety, shall be made good as general

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average; but where a ship is afloat, no loss or damage caused to the ship, cargo, and freight, or any of them, by carrying a press of sail, shall be made good as general average.

RULE VII.—DAMAGE TO ENGINES IN REFLOATING A SHIP

Damage caused to machinery and boilers of a ship, which is ashore and in a position of peril, in endeavoring to refloat, shall be allowed in general average, when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage.

RULE VIII.—EXPENSES OF LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE

When a ship is ashore, and, in order to float her, cargo, bunker coals, and ship's stores, or any of them are discharged, the extra cost of lightening, lighter hire, and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

RULE IX.—CARGO, SHIP'S MATERIALS, AND STORES BURNT FOR FUEL

Cargo, ship's materials, and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of coal that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be charged to the shipowner and credited to the general average.

RULE X.—EXPENSES AT PORT OF REFUGE, ETC.

(*a*) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading, in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place, consequent upon such entry or return, shall likewise be admitted as general expense.

(*b*) The cost of discharging cargo from a ship, whether at a port or place of loading, call, or refuge, shall be admitted as general average, when the discharge was necessary for the common safety or to enable damage to the ship, caused by sacrifice or accident during the voyage, to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(*c*) Whenever the cost of discharging cargo from a ship is admissible as general average, the cost of reloading and storing such cargo on board the said ship, together with all storage charges on such cargo, shall likewise be so admitted. But when the ship is condemned or does not proceed on her

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original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average.

(*d*) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

RULE XI.—WAGES AND MAINTENANCE OF CREW IN PORT OF REFUGE, ETC.

When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of the repairs mentioned in rule X, the wages payable to the Master, Officers, and Crew, together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed on her voyage, shall be admitted as general average. But when the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the Master, Officers, and Crew, incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as general average.

RULE XII.—DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage done to or loss of cargo necessarily caused in the act of discharging, storing, reloading, and storing, shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XIII.—DEDUCTIONS FROM COST OF REPAIRS

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of "new for old," viz.:

In the case of iron or steel ships, from date of original register to the date of accident,—

Up to 1 Year Old. (A.)

All repairs to be allowed in full except painting or coating of bottom, from which one-third is to be deducted.

Between 1 and 3 Years. (B.)

One-third to be deducted off repairs to and renewal of woodwork of hull, masts and spars, furniture, upholstery, crockery, metal and glassware, also sails, rigging, ropes, sheets and hawsers (other than wire and chain) awnings, covers, and painting.

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One-sixth to be deducted off wire rigging, wire ropes and wire hawsers, chain cables and chains, donkey engines, steam winches and connections, steam cranes and connections; other repairs in full.

Between 3 and 6 Years. (C.)

Deductions as above under Clause B, except that one-sixth be deducted off ironwork of masts and spars, and machinery (inclusive of boilers and their mountings).

Between 6 and 10 Years. (D.)

Deductions as above under Clause C, except that one-third be deducted off ironwork, masts and spars, repairs to and renewal of all machinery (inclusive of boilers and their mountings), and all hawsers, ropes, sheets and rigging.

Between 10 and 15 Years. (E.)

One-third to be deducted off all repairs and renewals, except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.

Over 15 Years. (F.)

One-third to be deducted off all repairs and renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.

Generally. (G.)

The deductions (except as to provisions and stores, machinery and boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and provisions and stores which have not been in use.

In the case of wooden or composite ships:—

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made.

After that period a deduction of one-third shall be made, with the following exceptions:—

Anchors shall be allowed in full. Chain cables shall be subject to a deduction of one-sixth only.

No deduction shall be made in respect of provisions and stores which had not been in use.

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labor metaling are subject to a deduction of one-third.

In the case of ships generally:—

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In the case of all ships, the expense of straightening bent ironwork, including labor of taking out and replacing it, shall be allowed in full.

Graving dock dues, including expenses of removals, cartages, use of shears, stages, and graving dock materials, shall be allowed in full.

RULE XIV.—TEMPORARY REPAIRS

No deductions "new for old" shall be made from the cost of temporary repairs of damage allowable as general average.

RULE XV.—LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be made good as general average either when caused by a general average act or when the damage to or loss of cargo is so made good.

RULE XVI.—AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrival of the vessel or at the termination of the adventure.

RULE XVII.—CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual values of the property at the termination of the adventure, to which shall be added the amount made good as general average for property sacrificed; deductions being made from the shipowner's freight and passage money at risk of such port charges and crew's wages as would not have been incurred had the ship and cargo been totally lost at the date of the general average act or sacrifice, and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passengers' luggage and personal effects not shipped under bill of lading shall not contribute to general average.

RULE XVIII.—ADJUSTMENT

Except as provided in the foregoing rules, the adjustment shall be drawn up in accordance with the law and practice that would have governed the adjustment had the contract of affreightment not contained a clause to pay general average according to these rules.

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APPENDIX I

AVERAGE BOND

WHEREAS, the

whereof was master

having on board a cargo of

sailed from

on or about the day of 191

bound for

and in the course of her said voyage, it is alleged that

AND WHEREAS, by reason of the occurrences of the voyage, certain losses and expenses have been incurred, and other further losses and expenses may yet be incurred, which may be a charge by way of General Average or otherwise upon the vessel, her freight, her cargo, or either of them; or which may be charges upon specific interests.

NOW therefore, we the subscribers, owners, and/or charterers of said vessel, owners of her freight, owners, shippers or consignees of her cargo, or agents of one or more of said parties having such interest as we have severally described and set opposite our respective signatures hereto, in consideration of the waiver of the rights of the owner and/or other party interested herein to take immediate action against hull and/or freight and/or cargo for the enforcement of liens and/or General Average claims and/or other claims arising from this disaster not giving rise to liens do hereby for ourselves personally our respective successors, executors and administrators and for our principals their successors, executors and administrators, severally but not jointly or one for the other covenant and agree to and with

and————————who are hereby appointed trustees for all concerned, that all losses and expenses as aforesaid which shall be made to appear to be due from us or our principals or from any firm of which we are or were co-partners at the time any liability arose under the premises shall be paid unto the said

and/or————————as trustees for all concerned, provided that such losses and expenses shall be state and apportioned by————————Average Adjusters, in accordance with the established usages and laws in similar cases; and that such payment shall be made upon the completion of the statement of such losses and expenses and after due notice has been given thereof.

And we do further agree to furnish promptly to said adjusters upon their request all such information and all such documents as they may require from us to make the said adjustment.

This bond may be executed in several parts of like tenor and date, the whole of which are to constitute but one bond with the same effect as if each of said parts were severally signed by us.

In the event of the compensation for any services which have been or may hereafter be rendered in whole or in part to the cargo, whether of the nature of salvage or otherwise, being fixed by agreement or arbitration, We hereby agree to pay our proportion of the sum thus fixed; and in the event of action being brought to recover for such services, We hereby agree to give bond for our proportion of the sum sued for, in the same manner as if the person or persons by whom suit is brought, be they salvors or otherwise, had required such

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bond direct from us, before surrendering the cargo; and We further agree to pay and fully satisfy any final decree that may be rendered, according to our proportion thereof.

IN WITNESS WHEREOF we have to these presents set our hands in the City of

this day of in the year of our Lord

one thousand nine hundred and

SIGNATURES	MARKS AND NOS.	INTEREST	AMT. OF INVOICE		NAME OF UNDERWRITER

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APPENDIX J

General Average Guarantee

Form of Underwriters Guarantee for the Payment of General Average, Salvage and Special Charges

.....19

.....

.....

In consideration of the delivery from the..... of the following goods, viz:

.....

.....

.....

Consigned to.....

without the requirement of a deposit, we hereby guarantee the payment of all General Average, Salvage and/or Special Charges for which said goods are liable.

.....

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INDEX

Abandonment, 166, 330–333
Adjusters, 362
  general average, 301
Age of discovery, 7
A. H. U. A. forms
  1917 form, 235, 373
  auxiliary form, 245, 377
  builders risk form, 246, 380
Aids to navigation, 31
Airplanes, 279
American Record, The, 83
  page of record, 84
"And Arrival," meaning of, 231
Annual statement, 366
Anticipated freight, 261
Application, 100
  relation to policy, 103
  standard form, 370–371
Appraisers, 361
Arbitrage, 294
Arrests, 151
"As their interest may appear," use of the expression, 120
Assignment of policies, 106
  of hull policy, 238
  of Lake hull policy, 242
Assured, the, 112
At and from, 132, 134
Auxiliary vessels, 61, 244
  form for insuring, 377
  future of, 246
Average clauses, 161–162
  free of particular average, 194–198
  in A. H. U. A. (1917 form), 238
  in cargo insurance, 194
  in connection with particular average, 319
  in hull insurance, 223–224
Average, definition of, 2
Ballast, vessels in, 80
Barratry, 147
Bill of exchange
  acceptance of, 58
  form, 57
  method of collection, 57
  origin of, 47
  trading in, 59
Bill of lading, 48, 52, 53, 325
  freight, 257
Binders, 100, 358
Blanket policies, 123
Blockade, 269
Bordereaux, 295
Bottled goods, 209
Bottomry bonds
  earliest records, 2
  forms distinguished, 3
  Grecian exchange for placing bonds, 4
  insurable interest in, 115
  rate of interest, 3, 5
  sea codes *in re* bottomry, 5
Breach of warranty, 180, 239
Breakage, 215
Brokers, 99, 342
  as underwriter, 349
  duty twofold, 346
  in England, 351
  services in general average, 348
Bruges, important port, 6
Builders' risks, 246, 380
Bulk cargo carriers, 66
Bulkheads, 145
Buoyancy, 70
  center of, 73
Burlaps, 214
Burning, 198

Digitized by Google

Calms, 38
Cancellation of contracts, 105, 230
Canned goods, 209
Cargo insurance, 186
  attachment of risk, 132
  particular average on cargo, 314
  risk after discharge, 133
  valuation, 138
Carrier's liability, 165, 340
Carthaginians, 4
Certificate of enrollment, 326
Certificate of insurance, 48, 54
  countersignature of, 104
  form of certificate, 55
  is quasi-negotiable, 56, 106
  payment of loss in foreign cities, 56, 121
  proof of loss, 325
  transfer payment of loss, 121
Charter money, 256
Charter party, 51, 256
  bareboat form, 52
  standard forms, 52
Chartered or as if chartered, 262
C. I. F. (cost, insurance, freight), 49
Civil War, 24
Classification societies, 81
Clipper ships, 23
Club insurance, 229
Coal cargoes, 213
Codes
  Barcelona, Venice, Florence, Bilbao, 8
  laws of Wisby, 5
  Marine Insurance Act, 1906, 20
Co-insurance, 164, 292
Collectible freight, 258
Collision, 198
  liability, 227, 228
Commerce, the exchange of products, 44
Commercial documents, 47
Commercial geography, 44
  racial characteristics affect marine insurance, 190
Commissions (brokers), 348
Common carrier's insurance, 215. 216
Competition; effect on rates, 95, 157
Composite vessels, 61, 63
Concealments, 182
Concrete vessels, 61, 67
Constructive total loss, 327
  American and English practice differs, 329
Contraband of war, 270, 271
Contributory values hull, 239
  in general average, 305–307
Corporation underwriting, 109
  efforts to break monopoly, 17
  first American company, 22
  first companies organized, 14
  in United States, 97
  monopoly repealed, 18
  new companies, 19
  the monopoly, 15
Cost and freight sales, 49
  insurance and freight sales, 49
  sales, 48
Cotton, insurance of, 204
Crusaders, 5
Currency insurance, 217
Currents, 37
C. & F. (cost and freight), 49

Dairy products, 209
Darkness, 39
Dead freight, 259
Dead weight capacity, 70
Declaration of London. 269
Deductible average clauses, 161
  in Lake hull insuranee, 242
Derelicts, 37
Destruction of neutral prizes, 272
Detainments, 152
Deviation, 135, 136, 179
  excusable, 167
Disbursements insurance, 237
Displacement, 69
  curve, 69
Double insurance, 163, 164
Draft
  acceptance of, 58

Digitized by Google

Draft, form, 57
method of collection, 57
origin of, 47
trading in, 59
Dressed meats, 210
Duty insurance, 263

Eggs, 209
Elements of a contract, 96
Enemies, 150
Engine, the marine, 64
types of, 68
Explosion risk, 277
Expressed warranties, 180, 181
Extension into port, 133, 231
Extrinsic evidence in construing of contract, 103

F. A. S. free alongside, 48
F. I. A. insurance, 236
Fire, 145, 203, 214, 309
protection, 145
Floating policies, 122–124
in reinsurance, 285
F. O. B., free on board, 48
Fog, 38
Fortuitous losses, 93
Franchise, 161
effect in case of loss, 319
Fraud, 6–143
in England, 18
in West Indies, 23
voids policy, 182, 185
Free-board, 71
Free of British capture clause, 275
Free of capture and seizure clause, 153
Free of particular average, 194
F. P. A. A. C. and F. P. A. E. C., 195–198
Freight contingency, 258
Freight insurance, 251
delivery of cargo in specie, 257
future freights, 260
in general average, 311
pro-rata itineris peracti, 253
when is freight earned, 252

Frozen meats, 210
Fruits, 208
Full cargoes, 187, 201, 202

General average, 299
adjusters, 301
adjustment, 305
bond, 302, 424
definition, 301
distinguished from particular average, 2
earliest records, 2
elements necessary for, 302
guarantee, 302, 426
in hull insurance, 231
introduced into policy, 172
York-Antwerp rules, 308, 419
General cargoes, 187
Genoese, 5
Geography, physical, 29
commercial, 44
Good faith, 96, 98
Grain cargoes, 206, 207
Gravity, center of, 73
Greeks, 4
Guaranteed freight, 254
Giudon de la Mer, 9

Hanseatic League, 5
banished from England, 11
controlled commerce, 6–9
practised marine insurance, 10
the steelyard, 10
Harbors, 39
types of, 40
Harter act, 143
text of act, 417
Hemp, 207
Hides and skins, 211
Hull insurance, 219
attachment of risk, 133, 134
auxiliary vessels, 244, 377
builders' risks, 246, 380
Lake vessels, 240, 382
metal vessels, 235, 373
particular average on hull, 320
single vessels and fleets, 219, 220

Digitized by Google

Hull, valuation, 139, 221, 322
wooden vessels, 243
Hurricanes, 33

Ice, 38
Illicit trade, 165
Implied warranties, 173
Inchmaree clause, 226
Individual underwriters
business grows, 15, 16
in England, 13
in United States, 21, 97
Inquiry, meaning of, 100
Institute trading warranties, 223
Insurable interest, 97, 112
extent of, 113
in freight, 259
must be definite, 117
must exist, 117
who has insurable interest, 114
Insurance, marine
early records, 6
first use of word, 7
in England, 9
in United States, 22, 24, 25
origin, 1
Internal combustion engines, 68, 244
International law, 267, 273
Invoice, 48, 325
determines relation between buyer and seller, 50
visé of consul, 51
Iron vessels, 61, 64
Isherwood system, 65

Jettison, 1, 146, 309
Jumbo lines, 282
Jute, 207

Lake time clauses, 240, 382
vessels, 67
Law of averages, 95
Law of marine insurance
early codes and decisions, 19
first English statute, 12
in New York State, 118
law of the place in construing of contracts, 104
Law of marine insurance, Lord Mansfield, 20
Marine Insurance Act, 1906, 20, 387
proposed New York code, 27
Laws of Wisby, 5
Lay-up return premiums, 230, 242
Leakage, 215
Legal conduct, implied warranty of, 174
expenses in collision cases, 228
Letters of credit, 59
of mart and countermart, 151
Liability of carrier, 143
determined by bill of lading, 53
Licenses in time of war, 276
Limitation of liability, 122, 284, 287
Liners, 51, 64
Livestock insurance, 128, 210
Lloyd's coffee house, 13
Lloyd's List
control taken by Lloyd's, 16
publication commenced, 14
Lloyd's London, organized, 15
Lloyd's News, originated, 13
Lloyd's Register, 82
Load lines, 71
advantages of law, 72
Loan receipts, 341
Lombard street, 11
Lombards
controlled commerce, 6, 9
in England, 10
leave England, 11
Longitudinal framing, 65
Lost or not lost, 125
Losses
adjustment of loss, 160, 298
doubtful losses, 276, 338
fortuitous losses, 93
general average, 299
general discussion, 297
not covered by policy, 142, 143
particular average, 313
proofs and payment of, 159, 160, 325
salvage losses, 318

Digitized by Google

Losses, total loss of part, 313
total and constructive total loss, 327
war losses, 336

Machinery insurance as cargo, 214
as hull, 226
Manifest, 54
Marine engines, 64, 68, 244
Marine Insurance, definition, 93
purpose of, 95
Marine Insurance Act, 1906, history of act, 20
text of act, 387
Marine Insurance (Gambling Policies) Act (1909), 21
text act of, 415
Master of vessel, 129
Measurement of ships, 89
for cargo capacity, 90
Memorandum clause, 168, 171
Men-of-war, 150, 277
Mercantile customs in construing policies, 102
Merchant marine, the clipper ship, 23
decline, 25
revival, 27
Meta-center, 75
Meta-center height, 75
Metal vessels, 61
insurance of, 235, 373
Misrepresentations, 182
Missing vessels, 336
Monopoly, the, 15
efforts to break monopoly, 17
monopoly repealed, 18
Monsoons, 33
Moral hazard, 88, 91
in hull insurance, 220
Mutual companies, 352

Nationality, 87
Natural forces, 32
effect on cargo insurance, 192
Negligence, 94, 143

Ocean, the, 31, 32
Office organization, 356
On board or not on board, 261
On deck cargo, 127
unsafe deckloads, 8
Open policies, 122, 124
in reinsurance, 285
Ore cargoes, 213

Parcel post insurance, 217
Particular average, 313
distinguished from general average, 3
method of adjustment, 314
on cargo, 314
on freight and duty, 317, 323
on hull, 320
on profits and commissions, 320
Particular charges, 314
Payee of loss, 120
loss orders, 122
Perils of the sea, 143, 144
Permanent covers in England, 124
Phœnicians, 4
Physical geography, 29
methods of shipment controlled by physical enviroment, 189
Pilferage, 94, 148
Pirates, 148, 149
Plimsoll mark, 72
Policy forms
basic form necessary, 186
British form of policy, 109, 411
for hull insurance, 234
no standard forms in United States, 109
standard Lloyd's policy of 1779, 16
types of policies, 108
Policy of insurance, 54, 101, 411
assignment of, 106
attachment of, 116, 129, 130, 132–134
effect of printed, written and stamped words, 102
form of certificate, 55

Digitized by Google

Policy of insurance, form of policy, 110, 111
proof of loss, 325
rules for construction, 101, 412
signature of, 168
termination of risk, 131
Pools, 293
Port of refuge,
sale of goods at, 190
Port risk insurance, 232
P. P. I. insurance, 236
Preëmption, 273
Premium, 98, 157
based on ordinary transit, 199
earned when risk attaches, 159
on risk insured after arrival, 168
rates used in Great Britain, 158
uniform rate desirable, 170
Prepaid freight, 254
wrong in principle, 255
Prior insurance, 163
Products of Agriculture, 203
of animals, 208
of the forest, 212
of manufacturing, 213
of the mines, 212
Prompt attachment-implied warranty of, 178, 179
Proofs of loss, 159, 325
Protection and indemnity clause, 229
Protest of master, 324
Proximate cause, 141, 335

Refrigerated goods, 128, 209
Registered mail insurance, 217
Reinsurance, 115, 281
arbitrage, 294
excess, 288
loss reinsurance, 290
flat reinsurance, 292
pools, 293
purpose of, 284
share or participating, 287
shore reinsurance, 291
Representations, 182–184
Reprisals, 151
Respondentia bonds, 3
Restraints, 152
Return premium, 158
in hull insurance, 230
standard form for claiming, 372
Rhodians
system of maritime jurisprudence, 2
River and harbor craft, 68
Roaring forties, the, 33
Romans, 4
Rovers, 148, 149

Salvage, 339
associations, 86
losses, 318
Schedule rating, 205
Scrip certificates, 354
Seaworthiness
implied warranty of, 174
not applicable to time hull risks, 176
proof of breach, 178
refers to inception of risk, 176
to vessel not cargo, 177
tests of, 175
waiver of, 177
Securities, 217
Self-trimming vessels, 66
Separate valuations, 224
Shifted cargoes, 74
Silk, 211
Sinking, 197
Sisal, 207
Skimmings clause, 204
Speed of vessels
effect on cargo insurance, 192
Sprinklers, 145
Stability of vessel, 68, 73
Stamp Act in Great Britain, 124
Statement, annual, 366
Statistics, 363
Steam injectors, 145
Steel vessels, 61, 63
Steelyard, the, 10
Stevedores, 75
loading problems, 76
Stiff vessels, 75

Digitized by Google

Stipulations, 181
Storms, 32
Stranding, 197, 309
Stress and strains, 77–79
Strikers and locked out workmen, 153
Structural design of vessels, 61
  effect on cargo insurance, 192
Subject matter of insurance, 127
Submarines, 278
Subrogation, 339
Subsequent insurance, 163
Sue and labor clause, 155, 156
Sugar, 207
Supercargo, 155
Surveyors, 85, 358
Sweat damage, 204
Symbols of ownership, 56

Takings at sea, 151
Taxation
  conflicting taxation, 27, 28
  of foreign companies, 24
Technical words, effect of, in construing policy, 103
Temporary repairs, 321
Tender vessels, 75
Term of policy in New York, 122
  in Great Britain, 124
Termini of policies, 126
  attachment of policy, 129, 130, 132–134
  by breach of contract, 135
  in freight insurance, 262
  risk after discharge, 133
  termination of risk, 131
Thieves, 148
Thirds off, 225, 226, 311
Tides, 36
  effect on harbor development, 37
Total loss, 327
  of cargo, 334
  of freight, 335
  of hull, 334
Total loss only insurance, 232
Total loss of part, 313, 323
Trade, customs of, 188, 189
  processes of, 44
  routes of, 29, 45, 193
  types of, 46
Trading warranties, 222, 240
Trading with the enemy, 119, 275
Tramps, 51, 64, 65
Transit floaters, 124
Transportation insurance, 96
Types of vessels, 61
  effect on cargo insurance, 191
Typhoons, 33

Under deck cargoes, 187
Underwriter's organizations, 85
Unneutral service, 271
Usage, in construing policies, 102

Valuations, 137
  basis of valuation, 138
  of hulls, 221, 224
  valued policies justified, 138
Vegetables, 208
Venetians, 5
Vessels, types of, 61

Wager policies prohibited, 8
War bureaus (government), 279
Warehouse to warehouse clause, 132
War insurance, 150, 266
  losses, 336
Warranties, expressed, 180, 181
  implied, 173–180
  of loading, 223
  of neutrality, 274
  trading, 222, 240
Washing overboard, 146
Waves, 34, 35
Whom it may concern, 106, 118, 119
Wind, 32
  effect on ocean routes, 33
  trade winds, 33
Winter mooring clause, 241
  storage risks, 242
Wood cargoes, 212
Wooden vessels, 61–63, 243

York-Antwerp rules, 308
  text of, 419

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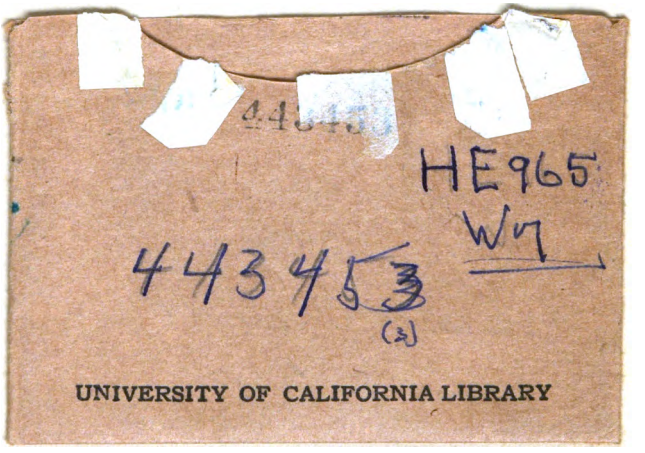
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